

**EMPLOYEES' RETIREMENT SYSTEM OF THE COUNTY OF MILWAUKEE
MINUTES OF THE APRIL 26, 2017 PENSION BOARD MEETING**

1. Call to Order

The Chairman called the meeting to order at 8:30 a.m. at the Marcus Center for the Performing Arts, 929 North Water Street, Milwaukee, WI 53202.

2. Roll Call

Members Present

Members Excused

Linda Bedford
Laurie Braun (Vice Chair)
Daniel Byrne
Aimee Funck
Michael Harper
William Holton
Patricia Van Kampen
David Zepecki
Norb Gedemer (Chairman)

Others Present

Margaret Daun, Corporation Counsel
James Carroll, Assistant Corporation Counsel
Amy Pechacek, Interim Director-Retirement Plan Services
Vivian Aikin, Sr. Pension Analyst
Erika Bronikowski, Retirement Plan Services Manager
Annamarie Kirsanoff, Assistant Fiscal Officer
Abbey Moreno, Information Systems Analyst
CJ Pahl, Budget and Management Coordinator, Office of the Comptroller
Supervisor David L. Sartori
Elizabeth Sheerin, Boston Partners
John Forelli, Boston Partners
Brett Christenson, Marquette Associates, Inc.
Christopher Caparelli, Marquette Associates, Inc.
Sushil Pillai, Joxel Group
Steven Huff, Reinhart Boerner Van Deuren s.c.
Jeffrey P. Sweetland, Hawks Quindel S.C.
Alan M. Levy, Lindner & Marsack, S.C.
Christopher J. MacGillis, MacGillis Wiemer, LLC
Erin M. Strohbehn, Gimbel, Reilly, Guerin & Brown, LLP
John Kaminsky, Retiree
Tara M. Brewi, Former Milwaukee County Employee
Dennis Hughes
Steve Koszalka, Retiree
Richard Ohly, Retiree

3. Minutes—March 22, 2017 Pension Board Meeting

The Pension Board reviewed the minutes of the March 22, 2017 Pension Board meeting.

The Pension Board unanimously approved the minutes of the March 22, 2017 Pension Board meeting. Motion by Ms. Braun, seconded by Ms. Van Kampen.

4. Dennis Dietscher—Appeal—Termination of Benefit

In open session, Jeffrey Sweetland addressed the Pension Board. Mr. Sweetland introduced himself as an Attorney from Hawks Quindel S.C. representing Mr. Dietscher.

Mr. Sweetland began by noting the recent procedural events regarding Mr. Dietscher's appeal. Mr. Sweetland first referenced Chairman Daugherty's letter, dated November 21, 2016, informing Mr. Sweetland of the Pension Board's November 16, 2016 decision to revoke Mr. Dietscher's pension. The letter stated that if Mr. Dietscher disagreed with the Pension Board's decision, he may appeal the decision under Rule 1016 by submitting a written request for review to Retirement Plan Services ("RPS") no later than 120 days after the receipt of that letter. Mr. Sweetland next referenced a letter from himself, dated April 13, 2017, addressed to Ms. Pechacek and Mr. Huff. In his April 13 letter, Mr. Sweetland noted that because Mr. Dietscher's appeal involves the revocation of a previously granted pension, it is governed by ERS Rule 1050. Mr. Sweetland explained that Rule 1050 provides a retiree with two appeals to the Pension Board, the second of which is for Rule 1016 review, which is where Mr. Dietscher's appeal stands today.

Mr. Sweetland next discussed the merits of Mr. Dietscher's appeal. Mr. Sweetland stated "the County says you need to strip Mr. Dietscher of his pension and get back everything already paid to him...the County is saying he was never entitled to it, at least not since 2009." Mr. Sweetland argued that to determine if Mr. Dietscher was entitled to a pension, the Pension Board must refer to section 201.24 of the County's General Ordinances. Mr. Sweetland stated that Ordinance section 201.24(8.1) imposes on the Pension Board the responsibility for making effective the provisions of Ordinance section 201.24, as actually written. Mr. Sweetland then observed that Ordinance section 201.24 states a pension is available to members of ERS. Mr. Sweetland added that Ordinance section 201.24(2.5) describes a "member" as any person who is a County employee on or after December 24, 1967. Mr. Sweetland reported that Mr. Dietscher was a County

employee from September 19, 1986 to February 28, 2014. Therefore, Mr. Sweetland argued, Mr. Dietscher was a member of ERS and eligible for a pension. Mr. Sweetland next referred to Ordinance section 201.24(4.1)(2), the Rule of 75. Mr. Sweetland explained that the Rule of 75 provides that a member employed as of September 29, 2011, whose age plus years of service equal at least 75, is eligible for a normal pension. Mr. Sweetland stated that Mr. Dietscher was 54 years and 7 months of age "when he retired" on February 28, 2014. Mr. Sweetland argued that Mr. Dietscher's age, combined with his years of service equaled 82.2, entitling him to retire under the Rule of 75 with a normal pension. Mr. Sweetland continued by stating that the County claimed Mr. Dietscher was "guilty of fault or delinquency on his part by virtue of his conduct," forming the basis of his felony conviction. Mr. Sweetland then noted that fault or delinquency is only mentioned twice in Ordinance 201.24. Section 201.24(4.5) states "a member shall be eligible for a deferred vested pension if his employment is terminated for any cause, other than fault or delinquency on his part..." Mr. Sweetland noted the second reference to fault or delinquency is in Ordinance section 201.24(3.5), which cross-references termination due to fault or delinquency on the member's part under Ordinance section 201.24(4.5).

Mr. Sweetland continued by discussing the qualifications for a deferred vested pension. Mr. Sweetland stated a deferred vested pension is a pension that will be available upon normal retirement age to an employee who leaves County service before attaining normal retirement age, as long as the employee has worked the required number of years for vesting. Mr. Sweetland stated a deferred vested pension is also available to an employee who is terminated for any cause, other than fault or delinquency on the employee's part. Mr. Sweetland further stated that Ordinance section 201.24(4.5) is the only provision that authorizes pension forfeiture, pending the satisfaction of three conditions. The first condition requires that the employee was not old enough to qualify for anything other than a deferred vested pension. Second, the employee was terminated for cause. Third, the cause for which the employee was terminated amounted to fault or delinquency on the employee's part. Mr. Sweetland argued that all three conditions must be met and the first two conditions be met before fault or delinquency can be considered. Mr. Sweetland then remarked that "otherwise, fault or delinquency becomes a free-floating concept completely unmoored from its highly circumscribed textual context in the Ordinance."

Mr. Sweetland argued that he has shown the County cannot establish the first condition for forfeiture, entitlement to only a deferred vested pension, because Mr. Dietscher's age and service entitled him to a normal pension,

which he received. Mr. Sweetland suggested the County understands it cannot meet the deferred vested pension requirement because Mr. Dietscher left County service in February 2014. Mr. Sweetland then stated that is why the County "says you need to pretend that he forfeited his pension in 2009 when he was not yet eligible for a normal pension." Mr. Sweetland further stated the County "wants you to treat fault or delinquency as a free-floating concept, free from the limitations imposed by section 4.5." Mr. Sweetland then asserted that Mr. Dietscher did not terminate his service in 2009. Instead, Mr. Sweetland alleged that Mr. Dietscher retired in 2014, when his employment ended and he was eligible for a normal pension under the Rule of 75.

Mr. Sweetland next argued that the County does not meet the second requirement imposed by Ordinance section 201.24(4.5), termination for cause. Mr. Sweetland referenced his letters of January 18, 2017 and April 13, 2017. Mr. Sweetland stated that because Mr. Dietscher was a member of the classified service, he could only be terminated for cause by the Pension Review Board ("PRB") following a hearing based on charges filed against him. Mr. Sweetland noted that a hearing by the PRB is commanded by section 63.10 of the Wisconsin Statutes, section 33.03 of the County Ordinances, PRB Rules 5 and 6, and County Civil Service Rule 7 section 4. Mr. Sweetland stated that no charges were ever filed against Mr. Dietscher with the PRB and, the PRB never terminated Mr. Dietscher, held a hearing, or took jurisdiction over him. Therefore, Mr. Sweetland argued, Mr. Dietscher was never terminated for cause. Mr. Sweetland then alleged that the County has urged the Pension Board to treat Mr. Dietscher as "having terminated himself for cause." Mr. Sweetland stated "that is not what section 4.5 is talking about and the County knows it." Mr. Sweetland then referenced *Milwaukee District Council 48 v. Milwaukee County, 2001 WI 65* (the "DC 48 case"). Mr. Sweetland stated that "until 2001, the County and the PRB routinely equated every termination by the PRB as a termination for pension forfeiting fault or delinquency." Mr. Sweetland further stated that "in contrast, no employee who resigned in the face of charges for his or her termination, *i.e.*, self-terminated, lost a pension." Mr. Sweetland argued this was confirmed by Ms. Bronikowski when she stated in her letter, dated April 14, 2017, that RPS knows of no other case where the Pension Board has denied or revoked service on grounds of fault or delinquency where the employee was not terminated by the PRB for cause. Mr. Sweetland argued, therefore, the attempted revocation of Mr. Dietscher's pension is without precedent in ERS's 80-year history. Mr. Sweetland suggested the County is depending on the standard settled on in response to the DC 48 case, Rule 807's limitation. Mr. Sweetland argued Rule 807 by its own terms is an application of one part of Ordinance section

201.24(4.5) and, therefore, does not stand alone. Mr. Sweetland further argued the definition of fault or delinquency comes into play only if the first two conditions of Ordinance section 201.24(4.5) are met. Mr. Sweetland suggested the County is arguing that as long as Mr. Dietscher's job-related criminal conviction meets the definition of fault or delinquency in Rule 807, he forfeited his pension in 2009, regardless of what the Ordinance states. Mr. Sweetland argued the drafters of the Ordinances and various amendments were careful to restrict the fault or delinquency standard to Ordinance section 201.24(4.5). Mr. Sweetland then stated the Pension Board is "not privileged to disregard the express terms of the Pension Ordinance, including 4.5, however much the County might desire it, and however much you may feel that Mr. Dietscher deserves to lose his pension." Mr. Sweetland suggested that the County is asking the Pension Board to take "arbitrary and capricious" action by setting the language of the Ordinance aside to revoke Mr. Dietscher's pension.

Mr. Sweetland concluded his remarks by noting the November 16, 2016 revocation of Mr. Dietscher's pension also resulted in the termination of Mr. Dietscher's retiree health insurance, which had been covering Ms. Dietscher's treatments for breast cancer and other tumors. Mr. Sweetland reported that although Ms. Dietscher's cancer is in remission, she still requires regular monitoring to ensure she does not suffer a relapse. Ms. Dietscher first learned of the cancellation of her health insurance in mid-March 2017, when she went to the pharmacy to pick up her prescribed medication. Mr. Sweetland added that the Human Resources Department first notified Mr. Dietscher of his January 31, 2017 health insurance cancellation by letter dated March 27, 2017. Mr. Sweetland stated the revocation of Mr. Dietscher's pension also penalizes Ms. Dietscher and none of this is justified by "any fair reading of the Pension Ordinances or the ERS Rules." Mr. Sweetland respectfully asked the Pension Board to reconsider and reverse its November 16, 2016 decision and restore Mr. Dietscher's pension and retiree health insurance. Mr. Sweetland also asked the Pension Board to immediately order RPS to pay Mr. Dietscher all unpaid benefits since November 16, 2016.

Mr. Sweetland thanked the Pension Board for its time.

The Chairman called for questions and there were none.

In open session, Alan Levy next addressed the Pension Board. Mr. Levy introduced himself as an Attorney from Lindner & Marsack, S.C., retained by the County for the Dennis Dietscher matter.

Mr. Levy first stated that he did not wish to re-recite to the Pension Board the same facts regarding this matter he presented in two prior proceedings and other related correspondence. Mr. Levy suggested the facts regarding Mr. Dietscher's appeal are undisputed and stated that Mr. Dietscher began committing criminal conduct on the job in 2009. Mr. Levy then argued the first question to answer is whether Mr. Dietscher's criminal conduct in office should be equated to forfeiture. Mr. Levy argued that a person who commits the incorrect conduct forfeits. As an example, Mr. Levy framed his argument in terms of Little League baseball. Mr. Levy stated that when one team does not show up to play, the team, not the umpire, forfeits the game. Therefore, Mr. Levy argued, the forfeiture began in 2009 when Mr. Dietscher began committing criminal conduct on the job. Mr. Levy stated that in 2009, Mr. Dietscher was only entitled to a deferred vested pension benefit and the current situation only arose because Mr. Dietscher was very good at hiding his misconduct for a number of years. Mr. Levy next stated "there has never been a suggestion that my statement of the facts just now is incorrect." Mr. Levy suggested that Mr. Dietscher believes he is entitled to receive his pension solely because he successfully hid his criminal conduct from ERS until his arrest in 2014 and he qualified to retire under the Rule of 75. Mr. Levy continued by stating it is the County's position that "you do not reward conduct...in which the employee has caused his own forfeiture to take place." Mr. Levy further stated "the word in the Ordinance is 'forfeit,' it is not 'take away'." It is not the action of the Board. Rather, the employee has a forfeiture.

Mr. Levy next argued the second issue to consider is how Mr. Dietscher got out of his employment with the County. Mr. Levy stated that Mr. Dietscher was arrested on February 19, 2014. Mr. Dietscher was then placed on administrative leave on February 20, 2014 and applied for an emergency pension benefit eight days later. In March 2014, Mr. Dietscher decided to apply for a normal pension benefit which, in effect, voided his emergency pension application. Mr. Levy then argued there was a period when Mr. Dietscher was in a "no man's land status." Mr. Levy stated the County's Employee Transaction/Change Report form ("ETCR") is the only document he has with information about how Mr. Dietscher ended his career. Mr. Levy observed that the ETCR has a section for employees to complete to indicate a resignation. However, Mr. Dietscher did not complete the resignation section of his ETCR and Mr. Dietscher's ETCR indicates he was terminated. Mr. Levy stated there has never been a verbal or written resignation from Mr. Dietscher. Therefore, Mr. Levy argued, there can be no argument that Mr. Dietscher's misconduct cannot be held against him because he resigned. Mr. Levy stated the process of termination took time. A lapse occurred from the time Mr. Dietscher began committing the

criminal conduct in 2009 and, the time the misconduct was discovered in 2014 and he applied for a pension. Mr. Levy suggested that Mr. Dietscher decided to "slip through the cracks" by getting his pension prior to being convicted. Mr. Levy observed that RPS depends on paperwork and there is no method for RPS to investigate a situation like Mr. Dietscher's on its own. There was no indication of resignation, only termination. Mr. Levy suggested the County terminated Mr. Dietscher because it decided it would not allow him to steal from the County and continue to work. Mr. Levy noted there is no indication of a PRB hearing and no indication of objection to the absence of a PRB hearing. Mr. Levy noted that if Mr. Dietscher believed that he was in some other category than what was stated on his ETCR, he should have submitted some type of notification to dispute such status.

Mr. Levy concluded his remarks by stating that Mr. Dietscher's appeal comes down to the clear question of whether a member has the right to avoid the consequences of their misconduct and avoid forfeiting benefits, simply because they were very good at hiding their misconduct for a period of time.

Mr. Levy noted that he maintains the highest respect for Mr. Sweetland in his analysis of the Ordinance. However, rational context must be given to the words in the Ordinance. Mr. Levy asked the Pension Board if they will take the position of ignoring Mr. Dietscher's misconduct or take the position that Mr. Dietscher forfeited his pension the moment he committed the criminal conduct because "nothing ever happens instantly."

Mr. Levy and the Chairman called for questions and there were none.

The Chairman asked Mr. Sweetland if he would like to offer a rebuttal.

Mr. Sweetland rebutted Mr. Levy's arguments by first stating the Ordinance does not use the term "forfeiture." Instead, the Ordinance states that a member is entitled to a deferred vested pension if they are terminated for any cause other than fault or delinquency. Mr. Sweetland next stated that the Wisconsin Supreme Court clarified in its ruling on the DC 48 case that a vested pension is a property right which may not be taken away without due process. Mr. Sweetland then argued that the notion of immediate forfeiture in 2009 is contrary to both the Ordinance and the Court's instruction in the DC 48 case.

Mr. Sweetland concluded his rebuttal by noting that Mr. Levy indicated there was a lapse in time between Mr. Dietscher's initial application for a pension in February 2014 and the granting of a normal pension to

Mr. Dietscher several weeks later. Mr. Sweetland then argued that during those several weeks, there was sufficient time for ERS management to file charges against Mr. Dietscher with the PRB. Mr. Sweetland stated it was the County's obligation to invoke the PRB's jurisdiction by filing charges. However, the PRB's jurisdiction was never invoked. Mr. Sweetland noted the requirement of the County to invoke the PRB's jurisdiction by filing charges is stated in section 6310 of the statutes, and section 33.03 of the Ordinances. Mr. Sweetland stated the Pension Board may feel that Mr. Dietscher deserves no pension and argued the Ordinance "does not allow you to go as far as the County is asking you to." Mr. Sweetland suggested that if the County would like this type of forfeiture to be recognized in the Ordinances, it should have the Ordinances amended to that effect.

The Chairman called for questions and there were none.

Ms. Braun then moved that the Pension Board adjourn into closed session under the provisions of Wisconsin Statutes section 19.85(1)(g) with regard to agenda item 4 for the purpose of the Board receiving oral or written advice from legal counsel concerning strategy to be adopted with respect to pending or possible litigation. At the conclusion of the closed session, the Board may reconvene in open session to take whatever actions it may deem necessary concerning these matters.

The Pension Board agreed by roll call vote 8-0 to enter into closed session to discuss agenda items 5 and 6. Motion by Ms. Braun, seconded by Ms. Bedford.

The Pension Board adjourned into closed session but did not discuss agenda item 4. The Pension Board addressed agenda item 4 later in the meeting at a second closed session.

5. Investments
(a) Boston Partners

In open session, Elizabeth Sheerin and John Forelli of Boston Partners distributed a booklet containing information on the large cap value equity investment management services provided by Boston Partners for ERS. Ms. Sheerin introduced herself as a Client Service Associate at Boston Partners and introduced Mr. Forelli as Senior Portfolio Analyst at the firm.

Ms. Sheerin began the discussion with an overview of the firm. Boston Partners is a value equity investment manager. Boston Partners utilizes its

bottom-up fundamental analysis to apply its consistent three-circle investment process across all of its strategies. Ms. Sheerin noted that all strategies managed by Boston Partners have outperformed their respective benchmarks since inception. As of March 31, 2017, Boston Partners has approximately \$90 billion in total assets under management. ERS is invested in the firm's flagship large cap value strategy with over \$32 billion in assets under management. Over 20 research analysts work on Boston Partner's research team to acquire attractive names in the portfolio. There have been no changes to the composition of the team. Boston Partners has added several new analysts consistent with the firm's growth. The majority of portfolio managers have been with Boston Partners since inception of the firm and many began as research analysts. Ms. Sheerin concluded her remarks by noting the value that a stable and tenured investment team lends to the investment process.

Mr. Forelli next discussed ERS's investment performance from inception through March 31, 2017. In August 1995, Boston Partners began managing approximately \$35 million in assets for ERS. Over the next 22 years, ERS requested approximately \$173 million in net cash flows. Capital appreciation is at approximately \$265 million. Total ending assets as of March 31, 2017 are approximately \$127 million. Through March 31, 2017, the portfolio has outperformed the Russell 1000 Value Index since inception in all time periods, except for the three-year period. Mr. Forelli noted the portfolio's performance has rebounded nicely since Boston Partners last presented to the Board in September 2016. Mr. Forelli explained that the 2016 fourth quarter was a performance low point for many active managers. Low volatility and high dividend-yielding stocks negatively affected many active managers during that time, including Boston Partners. As expected, those low volatility/high dividend-yielding stocks began to underperform relative to the rest of the market, and the relative performance of Boston Partner's portfolio has rebounded nicely. Mr. Forelli reported that since inception with ERS, Boston Partners has added approximately 120 basis points of value relative to the benchmark.

Mr. Forelli continued with a discussion of active versus passive investing. Mr. Forelli began by noting that passive investing is not entirely passive. The percentage of ownership of real estate investment trusts ("REITs") and utilities in passive investments are overweight relative to the market by approximately 20% and 15% respectively. Therefore, there are some inherent bets within passive investing. Mr. Forelli then referred to a group of stocks called "low-volatility stocks." This group of stocks performed well from 2011 through 2015 and Wall Street began selling these products. However, once individual investors began investing in these low-volatility

products, they underperformed the market. While the product may have outperformed since the 2011 inception, individual investors have lost money in these low-volatility products. Therefore, it is key to consider the timing of investing in passive strategies or exchange traded funds ("ETFs") when seeking enhanced returns. Mr. Forelli also noted that when considering passive commitments, it is important to understand how an index is expected to perform relative to active managers over the next one, three and five years. It can be tempting move to passive investing when it has outperformed over the last 12 months. However, that often is not an optimal strategy to add value over the long term.

Mr. Forelli then discussed 2016 fourth quarter performance. The 2016 fourth quarter was one of the worst quarters in Boston Partners 22 year history with ERS. The portfolio underperformed its benchmark by approximately 3% as low-volatility, high-dividend yielding utilities, REITS and consumer stocks outperformed. However, Boston Partners continued to avoid these securities and, over the last nine months, the portfolio has outperformed the benchmark by approximately 3.7%.

Mr. Forelli next discussed the portfolio's positioning. There are currently 87 stocks in the portfolio. The largest holding is J.P. Morgan Chase & Co. at 4.8%. To create a diversified portfolio, Boston Partners limits itself to no more than 5% at cost for any stock in the portfolio. The top ten positions comprise approximately 31% of the portfolio. The portfolio remains considerably underweight in REITS and utilities relative to the benchmark. Instead, Boston Partners prefers to invest in technology and health care companies that are generating free cash flow. Boston Partners also views financials as attractive investments. Financials remain fairly well-priced and have some positive business momentum with rising interest rates.

In response to a question from Ms. Bedford regarding Wells Fargo & Co., Mr. Forelli explained that at one time, Wells Fargo was one of the portfolio's top-ten holdings. However, Boston Partners exited its position in Wells Fargo when it became apparent the Fed would not raise interest rates in 2016. One month after selling Wells Fargo from the portfolio, the negative news emerged about its poor selling practices. However, Wells Fargo is a difficult stock not to own because it is such a large part of the value market. Boston Partners added Wells Fargo back to the portfolio in the 2017 first quarter. Mr. Forelli noted it was beneficial not to own Wells Fargo during its troubled period. However, Wells Fargo has replaced its chief executive officer and remains a high-quality stock to have in the portfolio.

In response to a question from Mr. Byrne, Mr. Forelli stated there are approximately 20% in holdings in the portfolio that are not in the value benchmark.

In response to a follow-up question from Mr. Byrne regarding retail exposure in the portfolio, Mr. Forelli stated that Boston Partners added value to the portfolio in the 2017 first quarter by being underexposed to soft retailers such as Macy's and Kohl's. These stocks are struggling, largely due to the success of online retailers such as Amazon.

In response to a question from Ms. Bedford, Mr. Forelli stated that Time Warner will soon be acquired by AT&T and that deal will likely close by the end of 2017.

Mr. Forelli concluded his remarks by noting that over the last ten-year period, the portfolio outperformed 56% in up markets and outperformed 63% in down markets. Boston Partners seeks to position the portfolio to protect capital in down market environments. This is another important factor to consider when debating active versus passive management.

Mr. Forelli thanked ERS for its investment in Boston Partners and noted ERS is one of its longest-tenured clients. Mr. Forelli stated that Boston Partners greatly values its relationship with ERS and hopes to continue its respected business association.

(b) Marquette Associates Report

Brett Christenson and Christopher Caparelli of Marquette Associates distributed the March 2017 monthly report.

Mr. Caparelli began with a discussion of the March 2017 flash report. J.P. Morgan core fixed income was terminated for organizational issues and the transition to Galliard is complete. Geneva Capital was terminated for performance and the funds were transitioned to the Vanguard S&P Mid-Capp 400 Growth Index Fund in March. Boston Partners, Artisan Partner and ABS remain on alert for performance issues. Mesirow remains on notice for performance and organizational issues. Mr. Caparelli noted that returns in general have improved considerably since the end of 2016.

The Fund's total market value as of March 31, 2016 was just under \$1.7 billion. The Fund remains relatively closely aligned with the investment policy targets. Fixed income is slightly under-allocated at 15.7% versus the 18% target. Mr. Caparelli noted that when the Fund's total cash equivalents and real estate allocations are combined with fixed income, the Fund is

above the 25% minimum threshold for non-equity investments, at 27%. Marquette will closely monitor the Fund's non-equity investments to ensure it does not fall below the 25% threshold. Other areas of the Fund remain closely allocated to the policy targets as cash flow requests have been primarily funded through equities. Private equity continues to fund up as capital calls continued through the 2017 first quarter. As of the end of the 2017 first quarter, private equity was allocated at 7.8% versus the 10% policy target.

Mr. Caparelli continued with a discussion of net-of-fees performance. The total Fund composite was up at 3.9% year-to-date. The Fund's long-term annualized returns remain strong from the two- through seven-year periods, with the seven-year total return at 7.7%. The Fund's trailing one-year return is also very strong at 10.2%. Mr. Caparelli noted that virtually all of the Fund's asset classes have exhibited fairly strong returns over the three- and one-year periods. The Fund's fixed income composite had a positive return in the 2017 first quarter at 0.9%, reversing the rare negative return in the 2016 fourth quarter. It is widely anticipated that the Federal Reserve ("Fed") will call for two more interest rate increases 2017. However, there is a broad consensus that if the Fed remains transparent with its plans to raise rates, any increases should not have a substantial negative affect on the bond market. Certain U.S. equity managers outperformed in the 2017 first quarter. Boston Partners, Artisan Partners, Mesirow and Silvercrest all struggled in 2016 but rallied the 2017 first quarter. One reason for the turnaround is that correlations between stocks and stock sectors began to drop, rewarding stock-picking activity. Quality also began to take some leadership in the 2017 first quarter further enhancing active manager performance. Mr. Caparelli explained that there have been recent discussions at the Investment Committee level regarding changes to the U.S. equity portfolio. However, Marquette expects that any changes should be relatively minor. Mr. Caparelli noted the Board's patience is being rewarded by not reacting to short-term underperformance in the U.S. equity space in the second half of 2016. Currency has been a large factor in international equity underperformance for the last several years. As the U.S. dollar strengthened, it negatively affected international returns for U.S. investors. However, international equities outperformed U.S. equities in the 2017 first quarter. The U.S. dollar weakened somewhat against a number of currencies in the 2017 first quarter. Performance of active international managers also improved in the 2017 first quarter. OFI matched its benchmark and Segall Bryant slightly outperformed its benchmark in the 2017 first quarter. The Fund's hedged equity composite is also performing well in 2017. ABS, which was struggling in 2016, has outperformed in the first quarter. Parametric also continued to outperform

in the first quarter. Mr. Caparelli noted that Parametric's portfolio is more liquid and less expensive than ABS and Marquette remains confident with this manager. The Fund's real estate composite also outperformed in the 2017 first quarter with a return of 1.6%. Mr. Caparelli noted these types of returns are more normal and returns in this range should be expected for the foreseeable future. As Marquette has been messaging for some time, the years of double digit price appreciation in real estate has likely come to an end. J.P. Morgan infrastructure has not reported returns yet for the 2017 first quarter. IFM benefited from the weakening U.S. dollar and was up at 6% for 2017 the first quarter.

In response to a question from Mr. Byrne regarding the recent performance of J.P. Morgan infrastructure, Mr. Christenson first stated that J.P. Morgan infrastructure has a fairly large exposure to Britain. Consequently, Brexit and the resulting volatility of the British pound negatively affected its performance. Mr. Christenson noted that J.P. Morgan has not yet reported returns for the 2017 first quarter. However, Marquette expects to see positive returns from J.P. Morgan. Mr. Christenson also noted that J.P. Morgan infrastructure has a high cash-on-cash yield which is currently at 5.2%.

In response to a question from Mr. Harper regarding the Fund's 25% minimum threshold for non-equity investments, Mr. Christenson confirmed that infrastructure has fixed income-like characteristics similar to real estate. However, according to Marquette's strict interpretation of ERS's Rules, Marquette felt it could not classify infrastructure as a non-equity investment because of how partnership contracts are structured in this asset class.

Mr. Christenson next discussed the Fund's private equity composite. Mr. Christenson noted the expansion of private equity is one of the largest changes to the Fund over the last five to ten years. The increase to private equity allocations was primarily made to help meet or exceed the Fund's 8% annual rate of return. Mr. Christenson then referenced a performance summary of the Fund's various private equity investments dating to 1995. The performance summary also detailed commitments, capital calls and distributions. Mr. Christenson noted that the Board switched its investment style with Adams Street to exclusively co-investments to help put capital to work more quickly. ERS committed \$30 million to Adams Street's 2014 Fund ("2014 Fund"). Marquette did anticipate that Adams Street would have called more capital to date for the 2014 Fund. However, Mr. Christenson noted the 2014 Fund currently has a net internal rate of return ("IRR") of 21%.

In response to a question from Mr. Harper, Mr. Christenson confirmed the 2014 Fund's 21% net IRR is only based on the amount of capital called, not total committed capital.

In response to follow-up questions from Mr. Harper, Mr. Christenson explained that ERS is able to maintain the remaining portion of the \$30 million in other areas of the portfolio until called by the 2014 Fund. Mr. Christenson further explained there is some cost involved anytime ERS makes a transaction in the portfolio. However, such costs have become very efficient over the years and are relatively low. ERS also utilizes a cash overlay manager and transition manager to ensure it minimizes friction in the portfolio as much as possible.

Mr. Christenson concluded by noting the Fund's newest private equity investment, Mesirow Fund VI ("Fund VI"), has a slight negative return. Mr. Christenson explained that Fund VI is a new fund and still in its J-curve phase. Marquette will review its private equity modeling and commitments in detail at a future Investment Committee meeting to discern whether additional commitments should be made in 2017. Marquette's current modeling forecasts another \$20 million should be made in private equity commitments in 2017.

6. Investment Committee Meeting Topics—April 10, 2017

Ms. Van Kampen reported on the April 10, 2017 Investment Committee meeting. The Investment Committee first discussed the performance of Mesirow. Marquette explained that Mesirow was not meeting its previously-determined performance goals for the 2017 first quarter. However, Mesirow has significantly outperformed recently. The Investment Committee concluded that it would not recommend terminating Mesirow at this time and will closely monitor its monthly performance.

The Investment Committee next discussed asset class assumptions. The Committee reviewed detailed ten-year returns in volatility for all asset classes based on Marquette's simulated market returns. The Fund's fixed income allocation has an 18% exposure to core bonds. The Committee concluded there was no incentive to make changes to fixed income. It was next noted that U.S. and international equities are the only asset classes that could potentially produce future returns in the range of 20%. The Committee discussed the possibility of minor changes to equities, such as increasing the Fund's allocation to emerging markets. The Committee decided to continue its discussion of possible changes to equities at a future meeting. The Committee then reviewed alternative asset classes. Defensive

equity, managed by Parametric, has been outperforming hedged equity. Real estate and global infrastructure have outperformed fixed income and it was noted that it was advantageous to move funds from fixed income to these categories.

The Investment Committee continued with a discussion of asset allocation. Marquette presented four asset allocation options and analyzed and compared each option to the Fund's current asset allocation. The Committee reviewed certain metrics, such as ten-year returns and ten-year volatility, to determine if any changes could be advantageous.

Ms. Van Kampen explained to the Board that the Investment Committee will likely recommend some minor changes to the Fund's current asset allocation in the next two to three months. However, the Committee would like to address one immediate change due to the recent termination of Geneva Capital. Upon termination, the funds from Geneva were placed in a Vanguard mid-cap growth exchange traded fund and must be transitioned. Marquette recommended transitioning the funds to a mid-cap core fund. The Investment Committee agreed with Marquette's recommendation. Ms. Van Kampen then asked the Pension Board to approve a change to the Fund's current asset allocation by moving 2.5% from mid-cap growth to mid-cap core, utilizing the Northern Trust S&P 400 Index Fund to lessen fees.

The Pension Board voted unanimously to approve a change to ERS's asset allocation by allocating 2.5% from mid-cap growth to mid-cap core, utilizing the Northern Trust S&P 400 Index Fund, as recommended by Marquette Associates. Motion by Ms. Braun, seconded by Ms. Bedford.

Mr. Christenson indicated he would forward the contracts to counsel for review.

Ms. Braun noted the Pension Board was asked to approve the asset allocation change today because of the direct fee savings to the Fund.

Ms. Van Kampen continued her report.

The Investment Committee next discussed active versus passive management. Ms. Van Kampen first noted this issue has and will continue to be an ongoing debate. Passive management has outperformed active management over the last ten years and particularly in the last three to four years. Value has also outperformed growth. After some discussion, the Committee felt it would be an advantageous long-term goal for the Fund to

achieve a better balance between active and passive strategies. However, Ms. Van Kampen noted now is not the optimal time to make such changes. The Committee decided to continue evaluating the active versus passive issue on a case-by-case basis as managers are considered for termination.

The Investment Committee concluded with a discussion of the J.P. Morgan transition, using Vertas as the transition manager. Ms. Van Kampen then asked Mr. Christenson to provide a post-trade analysis update to the Board.

Mr. Christenson explained that the pre-trade analysis range for transaction fees was estimated at 20 to -95 basis points. Post-trade fees settled at -77 basis points. This was somewhat lower than the mid-range Marquette had hoped to achieve. Mr. Christenson noted the purchasing side of the trade with Galliard cost 11 basis points, while the selling side of the trade with J.P. Morgan cost 66 basis points. Mr. Christenson noted that Marquette knew of the potential for high transaction costs because of J.P. Morgan's relatively illiquid portfolio. This is why the Board was so cautious in debating a change from J.P. Morgan. However, Mr. Christenson explained that high costs were also realized every time the Board raised capital from J.P. Morgan for cash flow. Mr. Christenson stated that J.P. Morgan's portfolio is constructed with smaller, illiquid bonds. Mr. Christenson noted that transition fees from a liquid bond manager would likely cost closer to 10 to 15 basis points on each side of the trade. Mr. Christenson concluded by stating Marquette will present the full post-trade analysis at the next Investment Committee meeting.

In response to a question from Mr. Byrne, Mr. Christenson reported that Galliard retained approximately 33% in-kind of the J.P. Morgan portfolio.

Mr. Christenson explained that Galliard accepted as many bonds it could in-kind and did everything possible to minimize the trade. Mr. Christenson noted that Galliard was also very helpful in terms of liquidating the J.P. Morgan portfolio. In reality, the bonds were fairly difficult to sell, but Marquette believes the overall process was successful.

Mr. Byrne then requested that Galliard provide some additional information relative to how it determined which bonds to keep in-kind, and, how different the current portfolio might look versus what Galliard might have purchased with cash.

Mr. Christenson suggested the volatility of ERS's portfolio is very close to all other portfolios Galliard is managing in a similar fashion. Mr. Christenson also indicated he would ask Galliard to present on the portfolio in the near future.

Ms. Van Kampen concluded her report. The Investment Committee concluded its meeting with a discussion of securities lending. BNY Mellon requested that ERS review its existing lending agreement with BNY Mellon and concur with its strategies and benchmarks. Marquette reviewed the agreement and recommended no changes. The Investment Committee concurred with Marquette's recommendation.

7. Audit Committee Meeting—April 13, 2017

Mr. Harper reported on the April 13, 2017 Audit Committee meeting.

The Audit Committee first discussed the Pension Board annual meeting. Ms. Aikin updated the Committee on planning for the May 26, 2017 annual meeting. To date, approximately 100 retirees have indicated they will attend the annual meeting. The response deadline is May 19 and RPS will provide final attendee numbers to the Board before the meeting. The Pension Board will hold its regular business meeting at 8 a.m. on May 26. The Pension Board will then hold the annual meeting at 9:30 a.m., intending to conclude between noon and 1 p.m. The Audit Committee recommended the Pension Board manage the group discussion at the annual meeting by limiting topics to general retiree concerns. The Committee felt the annual meeting is not the proper venue for retirees to bring forth individual concerns of a specific nature. The Committee also recommended highlighting the agreed-upon procedures for the ongoing Baker Tilly audit because of recent press coverage. Mr. Harper noted that invitations to the annual meeting will also be extended to the County Executive, the County Board Chairman and the Comptroller, and the Pension Board will receive advance notice of responses.

The Audit Committee next discussed interest applied to overpayments and underpayments. Mr. Huff recently communicated with the IRS regarding the application of the correct interest rates to overpayments for the original Voluntary Correction Program submission ("VCP").

Mr. Huff explained to the Board that the original VCP was in process for multiple years. However, the IRS did not define what interest rate to apply until 2015. Mr. Huff noted the IRS then definitively stated for the first time in 2015 that interest must be compounded annually. The IRS also stated in 2015 it would require 8% interest be applied to underpayments and 5% interest be applied to overpayments. Mr. Huff noted it was important to consider these were the rates established and utilized through the completion of the original VCP in 2016. Therefore, any corrections still in process with

the supplemental VCP will be subject to an ongoing question with the IRS regarding interest rates.

Mr. Harper continued his report. The Audit Committee then discussed BNY Mellon and a possible request for proposal ("RFP") for custodial services. RPS has experienced ongoing service issues with BNY Mellon regarding the timing of information, which has been causing delays in producing the Fiscal Officer reports presented at the Pension Board meetings. There are also concerns surrounding BNY Mellon's data entry method. The Audit Committee is in the early stages of determining whether a possible RFP should be issued for custodial services. Ms. Braun recommended referring the matter to the Investment Committee for a final decision.

The Audit Committee continued with a discussion of the Joxel Group. Mr. Harper explained the Joxel Group is the vendor ERS has contracted with to manage implementation of the V3 system. Contract extensions are required for co-development and testing support consulting services provided by the Joxel Group.

Mr. Harper then introduced Mr. Pillai to the Pension Board as representative from the Joxel Group.

Mr. Pillai provided a brief overview of the Joxel Group and its ongoing contract with ERS. Mr. Pillai explained that ERS contracted with Joxel Group to manage the V3 application. Mr. Pillai noted that with all of ERS's variations and Rules that must be maintained in the system, it is the most complex pension system he has ever worked with. Mr. Pillai also explained that ERS selected the V3 software system from Vitech before ERS contracted with the Joxel Group. Vitech is a market leader in the pension software application business and he stated that virtually every large public and private sector pension fund utilizes its software. Mr. Pillai noted his firm works exclusively on the direction of Ms. Moreno and the RPS team. Mr. Pillai explained that Vitech's V3 software serves only as a base application product. ERS's complex calculations and business rules must then be integrated and maintained in the base product to work for ERS. The Joxel Group is responsible for the integration of Vitech's base V3 software application. Ms. Moreno and her team provide all of the specifications to the Joxel Group required to calculate a pension under ERS. Mr. Pillai noted that the Joxel Group also maintains a separate spreadsheet system which it utilizes to verify the system calculations are correct. If the numbers are not correct, the Joxel Group performs an evaluation to locate and correct the error. Mr. Pillai indicated he is pleased with the way the V3 system has been functioning and noted the team has taken a very conscientious effort to validate and ensure the system is accurate.

Mr. Pillai next provided a brief overview of Vitech, which is headquartered in New York. Mr. Pillai noted that Vitech's rates are fairly high and its service came at a relatively high cost with poor responsiveness. Many other pension funds have complained about the high cost and response time from Vitech. Vitech developed a solution to the problem which is a concept it calls "co-development." Co-development essentially means that pension funds could have their own information technology ("IT") staff managing its application. ERS then issued an RFP and contracted with the Joxel Group for co-development.

Mr. Pillai concluded his remarks by summarizing the responsibilities of the Joxel Group's co-development team. The co-development team is comprised of consultants who work for RPS. The co-development team's duty is to get the system operating to the point where Ms. Moreno and her team feel comfortable enough that the Joxel Group can move beyond the testing phase and perform the upgrade. Once the upgrade is complete, the Joxel Group will begin phasing out its consultants.

Mr. Pillai called for questions.

Ms. Braun thanked Mr. Pillai for his presentation. Ms. Braun noted the Board understands that ERS is an extremely complex pension system to deal with and thanked Mr. Pillai for reducing the costs related to the V3 application. Ms. Braun then explained that she has been a member of the Pension Board for several years. Every year, the Board is advised by RPS that it needs to perform the upgrade because the system will no longer be maintained. The Board is also continually asked to approve annual budget costs to "clean up the system." The requested funds are added to the annual budget, but the clean-up is never completed, and the upgrade is ultimately delayed. Ms. Braun then asked Mr. Pillai to address the ongoing issues that seem to delay the upgrade each year.

Mr. Pillai first explained that the Joxel Group is the IT staff responsible for managing both system and operational issues within the ERS system. The annual budget costs support the IT staff. Mr. Pillai next explained that updating ERS's 18-year old flawed system was much more challenging than the Joxel Group originally anticipated. The Joxel Group continues to perform its dual testing application process to ensure pensions are calculated accurately. However, to ensure absolute accuracy, the co-development team must perform a great deal of checks and balances on the system. Mr. Pillai noted that the Joxel Group's philosophy is "garbage in, garbage out." Therefore, the Joxel Group will not give confirmation for the upgrade until it is absolutely certain that the system is completely accurate. Mr. Pillai stated he has been on the co-development team for some time and he now sees

"light at the end of the tunnel." The team has reached the point where all backDROPs are corrected and the data is cleaned up. Mr. Pillai stated there is still additional work to be done, but the intent is to complete the clean-up by year-end and progressively upgrade.

Ms. Moreno then addressed the Pension Board. Ms. Moreno stated that once she assumed her current position, she realized the system should have never gone live when it did. Ms. Moreno explained that many business requirements were incorrectly provided to Vitech and were incorrectly implemented. Ms. Moreno further explained it is her responsibility to work with the co-development team and RPS staff to identify the correct business requirements that should be entered in the system. Ms. Moreno noted this process is by no means a "quick fix" when working with calculations and code. Testing of any changes must first be successfully completed in a testing environment before going live. Ms. Moreno explained that changes are now being implemented via a process called the "waterfall effect." The waterfall effect essentially means that each issue is ranked by impact beginning with primary global issues that affect all calculations. Once the primary issues are corrected, the team can work on secondary issues. The waterfall effect ensures that whatever change is being added to the system is not negatively affecting something that has already been corrected. Ms. Moreno explained that she abandoned the prior testing plan when she assumed her position because it was flawed. Ms. Moreno further explained that the co-development team can only do so much because it relies on the data it receives from Ms. Moreno and her team. Ms. Moreno noted it is difficult for RPS staff to provide direction to the co-development team when they must focus attention on other matters such as the VCP calculation. It is also more difficult to correct errors in the system that should have been corrected at implementation. Ms. Moreno reported that her team has now mapped out all issues for the co-development team that must be corrected. Ms. Moreno has also advised both the former and current Director of RPS that RPS is in no shape to go ahead with the upgrade. However, Ms. Moreno indicated she understands why costs for the upgrade must be included in ERS's annual budget. Ms. Moreno reported that 43 issues were implemented incorrectly in 2009 because Milwaukee County staff provided Vitech with incorrect business requirements. Ms. Moreno stated that if those 43 issues can be corrected in 2017, the upgrade could happen in 2018. However, Ms. Moreno noted it took 1.5 years just to correct the backDROP and it is difficult to predict with certainty how long testing and development will take to correct the other 43 issues.

Ms. Braun noted the former Director of RPS reported to the Pension Board for years that that RPS was on the verge of going live. The former Director

also explained that the upgrade must be completed soon because the system will no longer be supported. Ms. Braun then asked what specific date the system will no longer be supported.

Ms. Moreno explained the former Director of RPS was referring to the Oracle database and stated that database is no longer supported.

Ms. Moreno next explained that her team is assisting with testing the database and all testing being performed now will work in the new hosting environment.

Mr. Byrne said he appreciated the realistic discussion of the action required to successfully complete the upgrade. Mr. Byrne also noted it appears to be a considerable possibility that the upgrade may not be completed in 2017. Mr. Byrne then asked how much longer it may take if the 2017 goal is not met.

Mr. Pillai responded to Mr. Byrne by stating the team's ultimate goal is to complete the work judiciously and effectively, and the team is placing all of its effort to the meet the year-end goal. Mr. Pillai noted that because the issues are extremely complex, it is difficult to predict with 100% certainty that the year-end goal will be met. The standard is for absolute accuracy before the upgrade is implemented. Mr. Pillai stated the team will alert the Pension Board if there is any departure from the current timeline.

In response to a question from Mr. Harper, Mr. Pillai confirmed that he will provide the Pension Board with a copy of the co-development team's transition plan and project plan to correct the 43 issues.

The Pension Board voted unanimously to approve The Joxel Group contract extension for application development and support services and, to authorize the Interim Director of Retirement Plan Services, Ms. Pechacek, to execute the contract. Motion by Ms. Van Kampen, seconded by Mr. Byrne.

Mr. Harper concluded his report on the April 13, 2017 Audit Committee meeting.

The Audit Committee concluded its April 13, 2017 meeting with a discussion of benefit calculation errors and corrections. Ms. Pechacek updated the Audit Committee on her appearance at the April 13, 2017 County Board Finance Committee meeting where she discussed the agreed-upon procedures for the Baker Tilly audit.

Ms. Bronikowski then updated the Pension Board on the agreed-upon procedures engagement with Baker Tilly. Baker Tilly staff has been in the RPS office for the past three weeks. Baker Tilly is reviewing all files that fall under the agreed-upon procedures. Ms. Bronikowski reported that Baker Tilly is making good progress. RPS has set several milestones for Baker Tilly and it is close to meeting its first milestone.

In response to a question from Ms. Braun, Ms. Bronikowski explained that Baker Tilly held its first internal project status meeting with the Interim Director of RPS, the Comptroller and the Audit Department one week ago.

In response to a follow-up question from Ms. Braun, Ms. Bronikowski confirmed that she would ask that the Chairman, Vice Chair or full Pension Board be invited to attend the next internal project status meeting.

The Pension Board discussed disability retirement issues later in closed session.

The Chairman then announced that the Board would revisit agenda item 4 in open session, to allow Supervisor Sartori to provide comments on the Dennis Dietscher matter.

Supervisor Sartori thanked the Chairman and noted that he has strong concerns regarding Mr. Dietscher's appeal. Supervisor Sartori said he served in the criminal justice system for 36 years, putting his life on the line every day for the taxpayers of Wisconsin. Supervisor Sartori stated that as the eighth district Supervisor of Milwaukee County, he did not lie, cheat or steal. Supervisor Sartori stated that he takes a great deal of pride in serving the people of Milwaukee County with honesty and integrity. Supervisor Sartori then stated what Mr. Dietscher did was evil and Supervisor Sartori has no sympathy for him. Supervisor Sartori reported that he will also be meeting with Corporation Counsel. Mr. Sartori indicated that he plans to introduce legislation at the County level to rectify and enhance some of the protections that the taxpayers of Milwaukee County deserve.

Supervisor Sartori next explained that he spoke with Ms. Daun in private and a misunderstanding occurred regarding the Pension Board's earlier closed session. Supervisor Sartori stated that he was mistaken in insisting he remain present during the Pension Board's closed session deliberations on the Dennis Dietscher appeal. Supervisor Sartori thanked Mr. Carroll for his assistance. Supervisor Sartori indicated that he has some very strong concerns regarding the ratio of ERS retirees to active employees and the financial stability of ERS. Supervisor Sartori further noted that he is not in favor of abolishing ERS. Supervisor Sartori concluded his remarks by

expressing his gratitude to Mr. Heer and his office for the commendable work they are doing. Supervisor Sartori thanked the Pension Board for allowing him to speak and noted that he will attend future Pension Board meetings.

Ms. Daun then expressed her sincere apologies to the Pension Board members regarding today's earlier closed session. Ms. Daun observed that she notified the Pension Board members via e-mail on April 25 to explain that she could not attend the entire Board meeting. Ms. Daun then stated she received a telephone call from Mr. Carroll this morning and arrived as quickly as possible. Ms. Daun stated she is always happy to be present at Pension Board meetings. Ms. Daun further stated that anyone could call her at any time should she be needed at the Board meetings and she would do her best to be present. Ms. Daun then noted for the record there was a miscommunication regarding Supervisor Sartori's presence in the earlier closed session portion of the meeting. Ms. Daun explained that she could have been more specific when the County Supervisors asked her if they could attend Pension Board meetings. Ms. Daun noted that because the Pension Board meetings are public, the Supervisors are more than welcome to attend. However, Ms. Daun stated she should have taken additional care to clearly explain the restrictions regarding closed session attendance. Ms. Daun explained that Supervisor Sartori now understands that, just like the County Board, the Pension Board is also entitled to receive candid, confidential closed session advice related to potential ongoing litigation. Ms. Daun thanked the Pension Board and again expressed her apologies.

8. Disability Retirement Reexaminations

(a) Shelton Smith—ADR

The Chairman called upon Mr. Smith for comments. Mr. Carroll confirmed that Mr. Smith was not present.

The Pension Board later addressed the matter in closed session.

9. Appeals

(a) John Kaminsky—VCP Correction

In open session, Erin Strohbahn introduced herself as an attorney representing Mr. Kaminsky regarding his appeal. Ms. Strohbahn noted that Mr. Kaminsky was also present.

Ms. Strohbehn began by stating that Mr. Kaminsky submitted the materials regarding his appeal via her firm and stated she would not reiterate orally the information already submitted in writing. Ms. Strohbehn explained she would summarize certain key issues and stated that Mr. Kaminsky asked to address the Board regarding the emotional toll this matter has taken on him and his family.

Ms. Strohbehn then summarized her argument. Ms. Strohbehn stated that Mr. Kaminsky's situation is unique because he was part of the group of retirees whose ongoing pensions were involved in the buy-in/buy-back ("BIBB") Ordinance amendments passed by the County Board in 2015 to "effectively forgive the issues related to the VCP" regarding that group's problematic BIBB issues. Ms. Strohbehn explained that Mr. Kaminsky was one of the individuals whose payments exceeded the 25% threshold. Therefore, Mr. Kaminsky was included in what Ms. Strohbehn referred to as the "forgiveness" of the error. Ms. Strohbehn then noted that while she referred to this as an "error," she did not believe that Mr. Kaminsky was responsible for the error. Following passage of the 2015 BIBB amendments, Mr. Kaminsky believed his issue had been resolved. Mr. Kaminsky received correspondence stating that his pension would not be affected, pending approval from the Internal Revenue Service ("IRS"). However, in December 2016, Mr. Kaminsky was advised by RPS that his prior rollover of 401(k) funds remained problematic. Mr. Kaminsky was the only member of the affected group who rolled over 401(k) funds, instead of 457 funds, to buy back service. The 2015 BIBB amendment passed by the County Board to resolve the errors did not address 401(k) rollovers. Ms. Strohbehn stated that as a result "Mr. Kaminsky has been excised from the forgiveness."

Ms. Strohbehn then referred to ERS Rules 1001 and 1044. Ms. Strohbehn argued that the Pension Board can take no action on Mr. Kaminsky's pension because ERS Rules 1001 and 1044 apply to Mr. Kaminsky's situation. Ms. Strohbehn argued that under Rule 1044, a signature from ERS is a Pension Board approval. Ms. Strohbehn also argued that the Pension Board can take no action after one year passes. Ms. Strohbehn asserted that if the Board wanted to take any action on Mr. Kaminsky's retirement, such action should have occurred prior to March 2009.

Ms. Strohbehn noted that ERS has reduced Mr. Kaminsky's monthly pension and explained it may take further action by garnishing his reduced monthly pension to recoup the overpayments. Ms. Strohbehn stated "as members of this Board know, Ordinances cannot be applied to retroactively take away someone's pension rights." Ms. Strohbehn then referenced ERS Rule 1050. Ms. Strohbehn argued that ERS wants to utilize the provisions of Rule 1050

to garnish Mr. Kaminsky's reduced benefit to pay back the overpayments. Ms. Strohhahn noted that Rule 1050 was not enacted until 2012, which is four years after Mr. Kaminsky's retired. Therefore, Ms. Strohhahn argued, Mr. Kaminsky's benefits cannot be reduced further under any circumstances.

Ms. Strohhahn concluded her remarks by stating that Mr. Kaminsky feels he has been singled out and is the victim of a mistake that the County Board intended to correct. Ms. Strohhahn stated that Mr. Kaminsky is asking to be treated in the exact same manner as all similarly-situated retirees who rolled over funds.

Mr. Kaminsky next addressed the Board in open session. Mr. Kaminsky thanked the Pension Board and summarized his concerns. Mr. Kaminsky began by stating the time he bought back from the County was not time spent working in a summer job with the County mowing lawns or lifeguarding. Mr. Kaminsky explained that he worked full-time for approximately two years as a case worker, managing a case load of 200 families with dependent children and other general assistance cases. Mr. Kaminsky stated that when he returned to work for the County in 1994, he was approached by ERS regarding purchasing his prior service. Mr. Kaminsky stated that until he was approached by ERS, he was unaware that he able to purchase his prior service. Mr. Kaminsky stated he was then prepared to write a personal check to purchase his prior service. However, Mr. Amerell advised Mr. Kaminsky that he could roll funds over from other pre-tax savings instead of writing a check. Mr. Kaminsky then rolled over \$10,000 from his 401(k) plan to ERS to purchase his prior service. Mr. Kaminsky subsequently received a letter and a receipt from ERS confirming that payment was received and his two and a quarter years of prior service had been purchased. Mr. Kaminsky stated he believed everything was taken care of until 2007 when he considered retirement. In 2007, Mr. Kaminsky was alerted to the fact there may be issues regarding purchasing his prior service.

Mr. Kaminsky then referred to a letter he received from Ms. Ninneman dated December 28, 2016. Mr. Kaminsky described his reaction when he read the letter and stated "it just floored me." Mr. Kaminsky explained the letter confirmed he was among the group of 200 retirees the County Board intended to "take care of" and "make everything right." However, the letter also explained that Mr. Kaminsky rolled money over from a 401(k) plan to ERS and that was not allowed. Mr. Kaminsky noted that rollovers were allowed from 457 plans, 408 plans or traditional IRAs. Mr. Kaminsky also noted the IRS allows rollovers from 401(k) plans and stated "there is virtually no difference." Mr. Kaminsky suggested that when RPS realized

he was the only individual affected by this situation, it should have simply asked the County Board to amend the Ordinance instead of singling him out.

Mr. Kaminsky concluded his remarks by describing the emotional toll this matter has taken on him and his family. Mr. Kaminsky stated that during the last three years of his employment with the County, he worked as a unit supervisor. During that same time, his manager, who worked as a section supervisor, retired. Mr. Kaminsky explained the section supervisor was never replaced and, in his last three years, he assumed the responsibilities of both a unit supervisor and section supervisor. Mr. Kaminsky reported that he received no pay increase after assuming the additional section supervisor duties. Mr. Kaminsky suggested he also saved the County the salary and benefits of the section supervisor who was never replaced. Mr. Kaminsky reported that he also led the Family Care audits during that time.

Mr. Kaminsky asserted that he worked extremely hard for Milwaukee County and saved the County a great deal of money. Mr. Kaminsky stated that almost one year to the date he completed radiation therapy for vocal cord cancer, he received the letter from RPS explaining that his \$1,600 monthly pension would be reduced to \$1,100 and, he owed over \$50,000 in overpayments. Mr. Kaminsky stated that "all I ever did is what I was told to do by the people whose job it was to tell me what to do." Mr. Kaminsky noted the experience of enduring 28 radiation treatments was "not as stressful, anxiety-producing and depressing" as his life has been since he received the December 28, 2016 letter from RPS. Mr. Kaminsky reported that he has not been sleeping well and continually questions what he could have done to prevent this from happening. Mr. Kaminsky suggested there are some very simple solutions that could resolve his matter. Mr. Kaminsky asked why RPS could not roll the money back out of ERS and into his IRA. Mr. Kaminsky stated he could then write a check to ERS for the funds, just as he had originally intended before Mr. Amerell advised him he could roll over his 401(k) funds. Mr. Kaminsky also suggested the County Board could simply amend the BIBB Ordinances to provide for 401(k) rollovers. Mr. Kaminsky suggested these are simple solutions that would correct something that has dramatically affected his life. Mr. Kaminsky asked how many of the Board members could produce over \$50,000 of their own savings to pay back something they never expected. Mr. Kaminsky thanked the Board for listening and stated this was his first opportunity to express what has been eating away at him for the last several months.

Ms. Strohbehn concluded by asking the Pension Board to reverse the action taken by RPS on December 28, 2016.

Ms. Strohbehn and the Chairman called for questions, and there were none.

(b) Ersol Henry—Decision on Prior Appeal

Ms. Henry was not present at the meeting.

The Pension Board later addressed the matter in closed session.

(c) Anne Varick—Disability Retirement Appeal

In open session, Attorney Christopher MacGillis introduced himself as an attorney from MacGillis Wiemer, LLC representing Ms. Varick regarding her accidental disability retirement ("ADR") application.

Mr. MacGillis began by noting that Mr. Carroll should have provided the Board in advance with copies of materials regarding Ms. Varick's appeal.

Mr. Carroll then noted the documents regarding Ms. Varick's appeal were previously e-mailed to the Pension Board members. Mr. Carroll apologized for not distributing hard copies of those documents to the Board earlier in the meeting and distributed related handouts to the Board members.

Mr. Carroll noted for the record he was not distributing copies of every document related to Ms. Varick's appeal. Mr. Carroll indicated he was only distributing copies of his confidential analysis and the two decisions from Judge Gerlach.

Mr. MacGillis then summarized the circumstances regarding Ms. Varick's appeal. Ms. Varick was a sworn law enforcement officer with Milwaukee County. Mr. MacGillis stated Ms. Varick served as a deputy sheriff for a significant period of time when she was involved in an on-duty squad car accident that left her and her partner disabled. Ms. Varick applied for both an ordinary disability pension and an ADR pension for mental and physical disabilities. The Pension Board denied Ms. Varick's initial ADR application based on a recommendation in the physician's reports produced by Managed Medical Review Organization, Inc. ("MMRO"), ERS's Medical Review Board. Mr. MacGillis noted his firm represented Ms. Varick in appealing the Pension Board's denial. A hearing was subsequently granted before Judge Gerlach, the hearing examiner selected by the Pension Board. Witnesses, evidence and arguments were presented at the hearing before Judge Gerlach. Mr. MacGillis then noted Ms. Varick's case is somewhat unique because Judge Gerlach generated a decision on February 10, 2017 affirming the Pension Board's denial of Ms. Varick's ADR pension. However, Judge Gerlach reversed his decision on March 31, 2017. Judge Gerlach issued a second memorandum decision dated March 31, 2017 ("Memorandum Decision"), recommending that the Pension Board reverse its prior decision and grant Ms. Varick an ADR pension.

Mr. MacGillis next discussed Judge Gerlach's hearings. Mr. MacGillis noted he would not spend a great deal of time discussing Ms. Varick's injuries or any of the testimony provided because that is what the Pension Board, under its Rules, has assigned Judge Gerlach to do. Mr. MacGillis asserted that the Pension Board assigned a retired, experienced judge to make conclusions about Ms. Varick's credibility and the doctor's credibility. Mr. MacGillis further asserted "you rely on the medical professionals to render a decision." Mr. MacGillis reported that Judge Gerlach weighed all of the medical evidence and all of the evidence provided on Ms. Varick's behalf. Mr. MacGillis noted that Mr. Carroll was also present at the hearing as the County's representative. Mr. Carroll presented evidence about Ms. Varick's medical condition and findings related to the squad car accident.

Mr. MacGillis next summarized his key arguments regarding Judge Gerlach's Memorandum Decision. Mr. MacGillis noted that in the first paragraph of the Memorandum Decision, Judge Gerlach stated that his prior conclusions and recommended decision were withdrawn. Mr. MacGillis suggested this should be significant to the Board because "any decisions, factual findings or legal inclusions that were made in the prior decision from Judge Gerlach are essentially gone." Mr. MacGillis suggested the Board could not legally rely on the findings and conclusions of Judge Gerlach's first decision. Mr. MacGillis next noted that Dr. Harrison was the physician MMRO used to evaluate Ms. Varick. On page three of the Memorandum Decision, Judge Gerlach stated that Dr. Harrison's opinion that Ms. Varick's disabling depression did not cause or relate to the accident is without any basis. Judge Gerlach further stated he found the testimony to be credible by Ms. Varick and her husband that Ms. Varick had no issues with alcohol prior to the accident. Judge Gerlach also described Ms. Varick's commendable attendance history prior to the accident as inconsistent with someone who had issues with alcohol. Mr. MacGillis suggested these are important points because Judge Gerlach is stating to the Pension Board he found Ms. Varick to be credible. Mr. MacGillis noted that Ms. Varick was not able to testify in person at the first hearing before Judge Gerlach. Mr. MacGillis next noted that Dr. Winston was the psychiatrist who treated Ms. Varick for her mental disabilities resulting from her on-duty car accident. Mr. MacGillis noted Judge Gerlach's Memorandum Decision states "I find the opinion of Dr. Winston, a psychiatrist, to outweigh the opinions of the Medical Board doctors who do not have any specialized training in psychiatry or psychology." Mr. MacGillis then explained that one of his arguments was that all of the MMRO physicians who evaluated Ms. Varick were medical doctors. The medical evidence presented by Ms. Varick was from a doctor who specializes in treating patients with psychiatric disabilities.

Mr. MacGillis reiterated that in his Memorandum Decision, Judge Gerlach states the opinions of a specialized psychiatrist outweigh those of the MMRO medical doctors. Mr. MacGillis also noted that Ms. Varick has consistently complained of low back pain since her work-related accident. Judge Gerlach also stated in the Memorandum Decision that he found Ms. Varick's testimony to be credible and consistent with Dr. Friedel's observations.

Mr. MacGillis concluded his remarks by arguing that, because Judge Gerlach's second decision withdraws any prior inconsistent decision denying Ms. Varick's ADR application, the only decision the Pension Board can make is to grant Ms. Varick an ADR pension. Mr. MacGillis stated that Judge Gerlach's factual findings and conclusions of law are very significant relative to the legal support that must be provided. Mr. MacGillis then referred to ERS Rule 1026, appeal procedures related to disability retirement determinations. Mr. MacGillis reiterated that Judge Gerlach issued his second decision on March 31, 2017. Mr. MacGillis noted Rule 1026(e) states that "Any party dissatisfied with the findings, conclusions or order of the appeals officer may file a written petition with the board as a body. The aggrieved party must file this written petition within twenty (20) days..." Mr. MacGillis argued that no appeal was filed by the County to dispute Judge Gerlach's second decision within 20 days. Mr. MacGillis then asserted there is no authority from a procedural standpoint other than to adopt Judge Gerlach's Memorandum Decision.

Mr. MacGillis asked for questions.

The Chairman questioned whether Ms. Varick was offered any other job accommodations within the sheriff's office.

Mr. MacGillis responded to the Chairman by first stating the legal standard for a deputy sheriff's ADR application is whether the individual can perform every task required of a deputy sheriff. Therefore, if an individual could work at desk position within the sheriff's office, but is unable to patrol the streets, the individual would qualify for an ADR pension. Mr. MacGillis stated it is clear from Judge Gerlach's Memorandum Decision that Ms. Varick cannot mentally or physically perform all of the duties required of deputy sheriff. Therefore, Mr. MacGillis argued, whether or not the sheriff's office could accommodate Ms. Varick with another job is irrelevant to the analysis. Mr. MacGillis also noted there is no long-term light duty in the sheriff's office and that light duty is a temporary position only.

Ms. Braun observed that a great deal of Mr. MacGillis' discussion today was devoted to Judge Gerlach's evaluation of Ms. Varick's credibility.

Ms. Braun then questioned whether Ms. Varick's credibility was addressed and considered during the initial hearing before Judge Gerlach to affirm the ADR denial. Ms. Braun noted Judge Gerlach stated quite the opposite in his first decision.

Mr. MacGillis responded to Ms. Braun by acknowledging that Ms. Varick's case is unusual. Mr. MacGillis stated that Judge Gerlach made certain statements about Ms. Varick's credibility, but he did not know specifically why Judge Gerlach withdrew and reversed his initial recommendation. Based on certain comments made by Judge Gerlach, Mr. MacGillis suggested Judge Gerlach believed his original decision was flawed.

Mr. Harper suggested another issue beyond that of Judge Gerlach reversing his initial decision is the credibility of the physicians ERS relies upon to render disability recommendations. Mr. Harper observed that ERS has a disability process it adheres to. Part of that process relies upon third-party professionals to provide the Pension Board with recommendations to inform its decisions. Mr. Harper questioned whether Mr. MacGillis considered pursuing medical malpractice on behalf of Ms. Varick.

Mr. MacGillis responded to Mr. Harper by suggesting the Pension Board should review its disability process if it believes the MMRO physician recommendations are unreliable. Mr. MacGillis then stated these are medical opinions that must be reviewed with other evidence provided by the employee and employer. When the interested parties do not agree, the evidence is brought before a finder of fact to analyze credibility and issue a determination. Judge Gerlach found the psychiatrist and medical doctor who testified on Ms. Varick's behalf to be more credible and persuasive than the MMRO physician's reports. However, Mr. MacGillis questioned whether Ms. Varick's case could rise to the level of malpractice.

Mr. Harper next questioned what medical evidence there is to support the causality between an accident such as Ms. Varick's and psychiatric trauma. Mr. Harper asked if Mr. MacGillis considering pursuing the option of Social Security disability to provide Ms. Varick with a source of income.

Mr. MacGillis responded to Mr. Harper by first noting he has spent much of his career representing Wisconsin law enforcement officers. Mr. MacGillis noted that based on those experiences, he has gained some understanding of how stressful and difficult it can be to work as a law enforcement officer and place your life on the line daily. Mr. MacGillis observed that it is difficult for a layperson to understand the stress law enforcement officers endure daily. Mr. MacGillis claimed that Ms. Varick immediately suffered symptoms of post-traumatic stress disorder because of the work-related

crash. Judge Gerlach noted in his decision that Ms. Varick had never been diagnosed with depression and never took prescription drugs prior to the crash. Ms. Varick subjected herself to a significant amount of therapy. Mr. MacGillis alleged that despite her best efforts, Ms. Varick now has permanent disability because of the work-related accident.

Mr. MacGillis concluded his remarks by asking the Pension Board to respect Judge Gerlach's second Memorandum Decision. Mr. MacGillis referenced provisions under ERS Rule 1026(c) and argued "frankly, I do not know that the Board has a choice."

(d) Tara Brewi—Deferred Benefit

In open session, Ms. Brewi thanked the Pension Board and summarized the circumstances regarding her appeal.

Ms. Brewi began by stating she has submitted documentation several times in regards to reviewing pension credits she accrued during her time working as a registered nurse and nursing instructor at the Milwaukee County School of Nursing. Ms. Brewi stated ERS denied her request to collect a pension because she had 5.99728 service credits which, "in accordance to the Ordinance of Milwaukee County, stated that I did not qualify for the six service credits...to give me my pension, which I was to start taking at age 60 in the amount of \$240." Ms. Brewi also stated a letter from ERS was "supposedly" sent to her in 1984, explaining the amount of pension that she could claim at age 60. Ms. Brewi then claimed she never received that letter.

Ms. Brewi continued by explaining she was recruited by the School of Nursing to become a Nursing I Clinical Instructor. Ms. Brewi stated "I had a regular appointment which, according to the rules and bylaws of the County, qualified me for the retirement." Ms. Brewi claimed that when she accepted her position as a clinical nursing instructor, she was never advised that her position was an emergency appointment and not a regular position. Ms. Brewi stated that according to the documentation she received from ERS, she believes she was considered an emergency appointment for approximately two years. Therefore, even though she was working full-time, she was not receiving pension service credits. Ms. Brewi then referenced two pension statements she received from ERS dated December 31, 2014 and December 31, 2015. Ms. Brewi noted the statements reference her clock number and state her pension service credit balance is six.

Ms. Brewi explained she took early retirement due to severe health issues and she has out-of-pocket medical expenses in the thousands of dollars. Ms. Brewi then noted she has friends and relatives that work as human resource professionals. Ms. Brewi stated it is her understanding that "anytime a company or business changes their requirements regarding its practices or eligibility to claim a pension that you qualified for, a certified letter is supposed to be sent to the employee with a full listing of what is to be done." Ms. Brewi reiterated that she did not receive the 1984 letter from ERS which stated she should contact ERS 90 days prior to the date she attains age 60 to establish payments. Therefore, Ms. Brewi alleged, she is being denied a pension because she did not receive the 1984 letter from ERS. Ms. Brewi noted that she obtained a copy of the 1984 letter after she began her own investigation into the matter and contacted RPS.

Ms. Brewi concluded her remarks by stating she understands it is standard numeric practice in America and Europe to round figures such as 5.9928 up to six. Therefore, Ms. Brewi argued, her service credits should be rounded up to six. Ms. Brewi asked that the County begin payment of her pension and also asked that she receive back pay from 2012 in the amount of \$15,120. Ms. Brewi further requested that beginning on May 1, an amount of \$240 per month be direct deposited into her checking account.

The Chairman called for questions.

In response to questions from Ms. Braun, Ms. Brewi confirmed that she signed a form to enroll in ERS when she first applied to the County as a Registered Nurse I. After her two year period of working as an emergency appointment, Ms. Brewi stated she had to resign and reenroll in ERS. Ms. Brewi also stated she did not recall signing anything that indicated her position was an emergency appointment when she went from working at the Eye Institute to the School of Nursing. Ms. Brewi stated she distinctly recalled hearing in her orientation that "when you hit your five-year mark, you are fully vested for your pension. They never talked about anything regarding emergency appointments." Ms. Brewi stated she kept records of "all her stuff" from the County and she has no record of a letter sent to her stating her position was an emergency appointment that could affect her benefit. Ms. Brewi stated that had she received such a letter, she would have thought twice about accepting the position. Ms. Brewi noted that from the time she began working for the County, to the time she left in 1984, she worked in excess of eight years.

Ms. Braun observed that if Ms. Brewi had to sign a second form to reenroll in ERS, it would indicate Ms. Brewi was not in the system.

In response to Ms. Braun, Ms. Brewi stated that "everything, my paychecks and whatever, indicated that I was completely enrolled in your system." Ms. Brewi questioned why she would have been receiving annual statements from ERS reporting she had accrued six service credits if she was not enrolled in the system.

The Chairman called for additional questions and there were none.

In response to a question from Ms. Brewi, the Chairman explained that Ms. Brewi will receive a letter in about ten days explaining the Pension Board's decision.

Ms. Brewi thanked the Pension Board and RPS, and left the meeting.

Ms. Braun then moved that the Pension Board adjourn into closed session under the provisions of Wisconsin Statutes section 19.85(1)(g) with regard to agenda items 4, 7(A)(6) and 8 through 11 for the purpose of the Board receiving oral or written advice from legal counsel concerning strategy to be adopted with respect to pending or possible litigation and, may adjourn into closed session under the provisions of Wisconsin Statutes section 19.85(1)(f) with regard to agenda item 8 for considering financial or medical information related to the listed persons which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of those persons. At the conclusion of the closed session, the Board may reconvene in open session to take whatever actions it may deem necessary concerning these matters.

The Pension Board agreed by roll call vote 9-0 to enter into closed session to discuss agenda items 4, 7(A)(6) and 8 through 11. Motion by Ms. Braun, seconded by Ms. Bedford.

10. Pending Litigation

- (a) Debra Tietjen v. ERS, et al.

The Pension Board took no action on this item.

- (b) Walker, et al. v. Milwaukee County, et al.

The Pension Board took no action on this item.

- (c) Baldwin v. ERS

The Pension Board took no action on this item.

- (d) Griffin v. County of Milwaukee, et al.

The Pension Board took no action on this item.

- (e) James Tietjen v. ERS, et al.

The Pension Board took no action on this item.

- (f) Wilson v. Pension Board of the Employees' Retirement System

The Pension Board took no action on this item.

- (g) Milwaukee District Council 48 v. Milwaukee County

The Pension Board took no action on this item.

11. Actuarial Valuation Error

The Pension Board took no action on this item.

After returning to open session, the Pension Board made a motion relative to agenda item 4 as follows:

- (a) Dennis Dietscher—Appeal—Termination of Benefit

The Pension Board has determined facts and conclusions as described below and denies the appeal by Dennis Dietscher consistent with the discretion assigned to the Pension Board by Ordinance section 201.24(8.17)(a) to interpret the Ordinances and Rules of the Employees' Retirement System of the County of Milwaukee ("ERS"), based on the following:

Factual Findings.

1. Dennis Dietscher enrolled in ERS in September 1986.
2. Mr. Dietscher was eventually employed as the Safety Coordinator for Milwaukee County, and in 2011, he became Acting Director of Risk Management.
3. Mr. Dietscher was arrested on February 19, 2014 based on charges of official misconduct, accepting bribes and lying in connection with his hiring of County contractors between 2009 and 2013. The County placed Mr. Dietscher on paid administrative leave on

February 20, 2014 and an Employee Transaction/Change Report was prepared.

4. On February 28, 2014, Mr. Dietscher terminated County employment. That same day, Mr. Dietscher also filed an Emergency Retirement Application with ERS with a proposed retirement effective date of March 1, 2014. Based on the time stamp on the application, it appears Mr. Dietscher filed the application at 4:31 p.m. on February 28, 2014.
5. On March 19, 2014, Mr. Dietscher completed his retirement paper work, including electing a form of benefit and beneficiary.
6. On June 28, 2016, Mr. Dietscher entered a guilty plea to two counts of felony misconduct in public office.
7. The County requested that the Pension Board review Mr. Dietscher's eligibility under Rule 807(d) to receive a pension benefit from ERS.
8. At its October 26, 2016 meeting, the Pension Board reviewed Mr. Dietscher's benefits and voted 5-3 to allow Mr. Dietscher to continue to receive a pension benefit.
9. On October 31, 2016, County Executive Chris Abele sent the Pension Board members a letter asking the Pension Board to reconsider the issue and allow counsel for the County to respond to any legal issues or questions the Pension Board may have on the issue.
10. The Pension Board officers added the reconsideration to the November Pension Board meeting for the entire Board's consideration.
11. As part of the reconsideration, the County's attorney (Attorney Alan Levy) and Mr. Dietscher's attorney (Attorney Jeffrey Sweetland) were provided an opportunity to submit additional arguments to the Pension Board, and based on a request from some members of the Pension Board, questions were provided to the attorneys to guide their responses.
12. At its November 16, 2016 meeting, the Pension Board reconsidered Mr. Dietscher's eligibility to receive his pension benefits based on the fault or delinquency standard. After a review of the information and the applicable Ordinances and Rules, the Pension Board determined by a 10-0 vote that Mr. Dietscher was ineligible to

receive a pension benefit. The Pension Board further determined that Mr. Dietscher should repay the benefits he previously received from ERS.

13. The Pension Board's decision was communicated to Mr. Dietscher through a letter to Mr. Sweetland. As part of this letter, Mr. Dietscher was provided appeal rights if he disagreed with the Pension Board's decision.
14. In accordance with the Pension Board's decision, Retirement Plan Services ("RPS") sent a letter to Mr. Sweetland requesting that Mr. Dietscher repay the pension benefits he previously received.
15. In a letter dated January 18, 2017, Mr. Sweetland, on behalf of Mr. Dietscher, requested an appeal of the Pension Board's decision. Mr. Sweetland submitted additional information and additional arguments to the Pension Board.
16. Due to scheduling conflicts and at the request of Mr. Levy, the Pension Board agreed to postpone Mr. Dietscher's appeal.
17. Both Mr. Levy and Mr. Sweetland subsequently made information requests and submitted questions to RPS. RPS provided the requested information on April 14, 2017. Mr. Dietscher's appeal was subsequently rescheduled for the Pension Board's April 26, 2017 meeting.
18. Mr. Levy and Mr. Sweetland, on behalf of Mr. Dietscher, submitted additional information and arguments for the Pension Board's consideration.

Pension Board Conclusions.

1. Appeal Procedures. As noted above, the Pension Board has reviewed Mr. Dietscher's eligibility for benefits on two prior occasions.
 - (a) Upon the initial consideration of the issue in October 2016, the Pension Board determined that Mr. Dietscher was eligible to continue to receive benefits. The County requested reconsideration of the issue.
 - (b) The Pension Board reconsidered the issue and heard additional arguments in November 2016. The Pension Board then determined that Mr. Dietscher was not eligible for a

pension benefit as his employment had been terminated due to fault or delinquency.

- (c) The County argues that the November decision was a final decision and Mr. Dietscher should not be permitted to appeal the decision to the Pension Board.
 - (i) Rule 1016 provides a member with the ability to appeal an adverse decision. Before November 2016, Mr. Dietscher had not received an adverse decision. Upon the receipt of the Pension Board's November decision and the letter from ERS requesting repayment of the benefits paid to Mr. Dietscher, Mr. Dietscher had the right to appeal the adverse decision. The County's request for reconsideration after the October decision does not remove Mr. Dietscher's right to appeal under Rule 1016.
- (d) Additionally, the County argues that Mr. Dietscher's sole remedy is to seek certiorari review of the November decision by a court.
 - (i) However, the Pension Board's November decision was not final until Mr. Dietscher failed to appeal within the time frame of Rule 1016 (120 days after notice of the adverse decision). Mr. Dietscher appealed in January 2017, which was within the 120 day time period. Accordingly, the Pension Board's decision was not a final decision from which Mr. Dietscher could seek review from a court.

2. Resignation. Rule 805 states that "an accepted resignation from [a member's] position" is not considered fault or delinquency.

- (a) Mr. Dietscher argued that he resigned from his position when he completed his emergency retirement application on February 28, 2014.
- (b) The Ordinances and Rules do not clarify the difference between resignation and termination of employment. The County contends that while Mr. Dietscher terminated employment, it does not consider his termination a resignation. The County states it did not receive a resignation letter from Mr. Dietscher. Mr. Dietscher's Employee

Transaction/Change Report has a space to be completed if the employee is resigning and that space on Mr. Dietscher's Report is blank.

- (c) Additionally, Rule 805 requires an acceptance from the County of the member's resignation.
- (d) Determinations regarding when and how Mr. Dietscher's employment was terminated fall within the authority of the County as his employer. Based upon the information currently before the Pension Board, the County's determination is that Mr. Dietscher did not resign and the County did not accept his resignation if there was one. The Pension Board finds that the County's assertion has a reasonable basis and has determined that it will accept the County's determination that Mr. Dietscher did not resign and if he did resign, the County did not accept such resignation.

3. Fault or Delinquency Standard. Ordinance section 201.24(4.5) provides an ERS member "shall be eligible for a deferred vested pension if his employment is terminated for any cause, other than fault or delinquency on his part."

- (a) The Ordinances do not define "fault or delinquency" and do not include procedural due process requirements before a member's pension benefit can be terminated.
- (b) In 2001, the Wisconsin Supreme Court, in Milwaukee Dist. Council 48, AFSCME v. Milwaukee County, et al., ruled that an ERS member must receive a procedural due process hearing to determine whether the member was terminated for fault or delinquency before the pension termination provisions of Ordinance section 201.24(4.5) can apply. The County did not adopt an Ordinance providing procedural due process in accordance with the case.
- (c) In the absence of a fault or delinquency definition in the Ordinance, and to address the procedural due process requirements, the Pension Board adopted ERS Rule 807 in January 2007. Rule 807 provides in part:

for purposes of section 201.24(4.5), a member's employment is considered to be terminated for fault or delinquency on his part if it is terminated due to

conduct resulting in a felony offense charge if the circumstances of the charge substantially relate to the circumstances of the member's particular job and the member is ultimately convicted of such felony offense.

- (d) In order to find fault or delinquency, the member's termination must have resulted from: (i) conduct; (ii) that results in a felony offense charge; (iii) the circumstances of the charge substantially relate to the member's job; and (iv) the member is convicted of such felony offense.

4. Mr. Dietscher's Conduct. The Pension Board finds that Mr. Dietscher's conduct is considered fault or delinquency under the Ordinances and Rules.

- (a) Mr. Dietscher admitted to accepting bribes and making false statements in connection with hiring contractors for County projects.
- (b) The conduct at issue substantially relates to Mr. Dietscher's position with the County. Mr. Dietscher's positions as Safety Coordinator and Risk Manager required him to select contractors to perform work for various County departments. As part of these duties, Mr. Dietscher chose contractors based on gifts and other compensation he received from the contractors. Accordingly, Mr. Dietscher's crimes were directly related to the duties he provided to the County as part of his employment.
- (c) Additionally, accepting bribes and making false statements are both felony convictions for which Mr. Dietscher entered pleas of guilty.

5. Termination Due to Fault or Delinquency. Because the Pension Board determined that Mr. Dietscher's conduct rises to the level of fault or delinquency, the next issue is whether his termination was due to fault or delinquency.

- (a) The County placed Mr. Dietscher on administrative leave on February 20, 2014 at the time of his arrest. While the County did not fire Mr. Dietscher, the County demonstrated that Mr. Dietscher stopped actively working after his arrest.

- (i) At the time the County placed Mr. Dietscher on administrative leave, he was told not to report to work, and his access to all County networks, systems, e mail and buildings was disabled.
 - (ii) The County further notes that it cannot be said that Mr. Dietscher suddenly decided to terminate his employment with the County for any reason except for his arrest and misconduct (i.e., there is no indication that prior to his arrest he planned on retiring).
 - (iii) Thus, the County's comments suggest that Mr. Dietscher's employment was constructively terminated as of February 20, 2014.
- (b) Mr. Dietscher argues that he was in Classified Service, so only the Personnel Review Board ("PRB") could terminate him. He further contends that because only the PRB could terminate him, only the PRB could terminate him for fault or delinquency. The County could suspend Mr. Dietscher, but he argues it must file charges with the PRB to terminate him due to fault or delinquency.
- (i) The County placed Mr. Dietscher on administrative leave after his arrest. Mr. Dietscher then filed his emergency retirement paperwork days later and terminated his employment. Once Mr. Dietscher terminated his employment, the County states it did not need to take any further action to terminate Mr. Dietscher's employment. Thus, a hearing with the PRB was not necessary.
 - (ii) Also, as noted by Mr. Dietscher, while prior Rules required the PRB to review a member's termination to determine fault or delinquency, this changed after Rule 806 was suspended in December 2006 and Rule 807 was adopted in January 2007.
 - 1. Rule 806 previously provided that the determination of whether a member's employment was terminated for fault or delinquency was made solely by the PRB and that the Pension Board would rely on the determination of fault or delinquency made by

the PRB and would not independently or separately determine whether a member's termination resulted from fault or delinquency.

2. As part of the Court's ruling in the 2001 Milwaukee Dist. Council 48 case, absent Ordinance amendments from the County Board, the Pension Board was required to make changes to the procedures for determining fault or delinquency. One change was to suspend Rule 806 and another was to adopt Rule 807, which does not rely on the PRB for the determination of what is fault or delinquency.
 3. Under Rule 807, the Pension Board makes the determination of who was terminated for fault or delinquency. The Pension Board may take a decision of the PRB into account, but an adverse decision by the PRB is not required by the plain language of the Ordinances and Rules.
- (c) There are sufficient facts for the Pension Board to conclude that Mr. Dietscher's employment was effectively terminated on February 20, 2014. Accordingly, the Pension Board finds that, based on the County's determination that Mr. Dietscher's employment was terminated due to his arrest, Mr. Dietscher's termination was due to fault or delinquency.
- (d) Mr. Dietscher contends that if termination for cause were interpreted to include resignation or retirement, the Pension Board would have license to review every employee's termination to determine whether the member was subject to the fault or delinquency standard.
- (i) Regardless of the circumstances regarding a member's termination, in order for the member to lose his or her pension, the member must be convicted of a felony which is related to his or her job duties. Therefore, there are very few members subject to this rule.
6. Retirement Status. Because of the findings and conclusions described above, the Pension Board also finds that Mr. Dietscher was ineligible for normal retirement and is a deferred vested member.

- (a) Mr. Dietscher's emergency retirement application was submitted at 4:31 p.m. on February 28, 2014, and Mr. Dietscher's final retirement paperwork was not completed until March 14, 2014.
 - (i) Normal retirement under Ordinance section 201.24(4.1) is only available for members who retire directly from active service. If a member has a gap between the member's termination of employment and retirement, the member is considered a deferred vested member under Ordinance section 201.24(4.5).
 - (ii) Because Mr. Dietscher had a gap period between his termination of employment (February 20) and retirement (February 28 or March 14), he is considered a deferred vested member under Ordinance section 201.24(4.5).
- (b) As a deferred vested member under Ordinance section 201.24(4.5), Mr. Dietscher is subject to the fault or delinquency standard (as explained above).
- (c) Mr. Dietscher argues he retired directly from County service, and is entitled to receive a normal pension under Ordinance section 201.24(4.1). He argues that it is clear he is entitled to and is receiving a benefit under Ordinance section 201.24(4.1) because he retired under the Rule of 75, which is only available under Ordinance section 201.24(4.1). Deferred vested members who retire under Ordinance section 201.24(4.5) cannot use the Rule of 75.
 - (i) RPS allowed Mr. Dietscher to retire under the Rule of 75 with a backDROP form of benefit, which are both only available to members who retire directly from active County service. However, at the time Mr. Dietscher retired, he had not yet been convicted of any felonies. Therefore, the Pension Board finds that his ability to retire under the Rule of 75 with a backDROP was voided once he was convicted of felonies that constitute fault or delinquency.

7. Emergency Retirement. The Pension Board also considered whether Mr. Dietscher was eligible to use the emergency retirement process and concluded that he was not.

- (a) Rule 1047, adopted in October 2012 after Rule 807 (which was adopted in 2007), describes the emergency retirement process. This process allows a member to retire from active service provided that his or her paperwork is completed within a certain time period while retaining the earlier retirement date. The Rule was adopted to codify RPS's emergency retirement procedures and include defaults for members who died prior to completion of the process.
 - (b) It was never the Pension Board's intent that Rule 1047 be available to allow members to circumvent the fault or delinquency rules.
 - (c) Based on the facts described above, the Pension Board finds that Mr. Dietscher was not eligible to use the emergency retirement process. The Pension Board further finds that Mr. Dietscher's retirement effective date was March 19, 2014, which is the day Mr. Dietscher completed his retirement application. A completed retirement application is required to elect a retirement effective date outside of the emergency retirement process.
 - (d) With a retirement date of March 19, Mr. Dietscher experienced a gap between the date he states his employment was terminated (February 28) and the date he retired (March 19). As noted above, any gap makes him a deferred vested member. As a deferred vested member, he is subject to the fault or delinquency standard.
8. Rescission of Service Credit After 2009. The County argues that Mr. Dietscher should not be eligible to receive a pension benefit because his conduct satisfying the fault or delinquency standard started in 2009 and any service credit earned after that date should be void.
- (a) The Ordinances and Rules do not provide a basis for ERS to terminate service credit earned by a member while the member was engaged in conduct meeting the fault or delinquency standard. Accordingly, while the Pension Board has denied Mr. Dietscher's appeal, its decision is not on the basis that Mr. Dietscher's conduct started in 2009.
9. Pension Benefit Final After One Year. Mr. Dietscher argues that RPS approved his application for a pension in 2014 as the agent of

the Pension Board and that approval was final after one year pursuant to Rule 1001. The Pension Board finds that Rule 1001 does not prohibit the Pension Board from rescinding Mr. Dietscher's pension benefit.

- (a) Rule 1001 provides that the actions of the Pension Board shall be final after one year. This Rule on its face applies to actions of the Pension Board, and does not apply to actions of RPS. A decision made by the Pension Board is different from a decision made by RPS. RPS reviewed and approved Mr. Dietscher's circumstances and normal retirement in 2014, not the Pension Board.
- (b) Additionally, the Pension Board finds that Mr. Dietscher's reading of the Rule is too broad and does not account for the fact that at the time Mr. Dietscher retired, he had not been found guilty of any felonies.
- (c) At the time Mr. Dietscher retired in February/March 2014, he had been arrested, but he had not admitted guilt to or been found guilty by a court of any felonies. In October 2016, Mr. Dietscher entered a guilty plea to two counts of felony misconduct in public office. To read Rule 1001 to lock ERS in to the circumstances as they were in 2014 and force it to ignore the change in circumstances is to read the Rule too broadly.

The Pension Board's vote to deny the appeal by Mr. Dietscher was unanimous. Motion by Ms. Van Kampen, second by Mr. Harper.

In open session, the Pension Board made a motion relative to agenda item 8 as follows:

- (b) Shelton Smith—ADR

The Pension Board voted unanimously to instruct RPS to issue a letter to Mr. Smith requesting compliance with the disability retirement reexamination by June 1, 2017 or informing Mr. Smith that the payments for his retirement benefit shall be discontinued after June 1, 2017. Motion by Mr. Byrne, seconded by Mr. Harper.

In open session, the Pension Board made a motion relative to agenda item 9(a) as follows:

(c) John Kaminsky—VCP Correction

The Pension Board voted unanimously to lay over Mr. Kaminsky's appeal to a subsequent meeting and to instruct counsel to draft an Ordinance amendment for inclusion of the 401(k) rollover in a VCP correction. Motion by Mr. Zepecki, seconded by Ms. Funk.

In open session, the Pension Board made a motion relative to agenda item 9(b) as follows:

(d) Ersol Henry—Decision on Prior Appeal

The Pension Board denies the appeal by Ersol Henry consistent with the discretion assigned to the Pension Board by Ordinance section 201.24(8.17)(a) to interpret the Ordinances and Rules of the Employees' Retirement System of the County of Milwaukee ("ERS"), based on the following rationale:

Factual Background.

1. Retirement Plan Services ("RPS") sent a letter dated July 26, 2013 to Ms. Henry to provide an estimate of her retirement benefits. The letter contained a bold section titled "ESTIMATE DISCLAIMER" that provided:

The information contained in this document is only an estimate of future benefits. Actual benefits may vary depending on various factors. Your final pension will be determined by the ordinances and rules established by the Pension Board.

In addition, the last paragraph of the letter stated, "These figures are estimates and will change when the final calculation is determined." The letter estimated that if Ms. Henry chose Option 2, she would receive a \$60,234.67 backDROP and a \$2,463.34 monthly benefit.

2. Ms. Henry submitted a retirement application to RPS on August 9, 2013 and retired effective August 17, 2013. In her retirement application, Ms. Henry chose an Option 2 form of benefit with a backDROP date of August 29, 2011.
3. On February 8, 2015, Ms. Henry contacted RPS and requested a review of her monthly pension payment. Ms. Henry stated that she

agreed to and signed off on her retirement benefit based on the prior calculation. She also alleged that in her final retirement meeting, she was told that the calculation was "fairly accurate" and that it would not change by more than \$100. Ms. Henry then noted that her monthly pension payment was in fact \$2,141.66 instead of the estimated payment of \$2,463.34. Ms. Henry indicated that after she asked about the reduction, she was told that her payment was recalculated after the estimate due to a calculation error involving back wages added to her 2009 earnings as part of a settlement with Milwaukee County. Ms. Henry then asked that her monthly payment, years of service and backDROP amount be reviewed.

4. RPS reviewed Ms. Henry's pension benefit and determined that she was not entitled to the higher estimate amount of \$2,463.34. RPS also found that the 2009 earnings in the V3 system used to calculate Ms. Henry's final benefit were correct.
 - (a) RPS noted that Ms. Henry was a member of the DC furlough settlement ("Settlement") in which Ms. Henry received \$26,804.95 in back pay in 2009, along with \$28,945.77 in interest and \$32,000 in compensatory damages. RPS found that this \$26,804.95 was properly allocated to Ms. Henry's earnings in 1997 and 1998 (not 2009) for purposes of her final pension calculation. RPS also found that the compensatory damages and the interest amounts were properly excluded from annuity earnings in Ms. Henry's final pension calculation.
5. In a letter dated March 3, 2015, RPS responded to Ms. Henry's inquiry regarding the calculation of her pension benefit. The letter explained that the \$26,804.95 back pay is considered part of Ms. Henry's annuity earnings for 1997 and 1998, and was credited to her annuity earnings for those years (\$16,286.69 in 1997 and \$10,518.26 in 1998) rather than for 2009. The letter also informed Ms. Henry that the interest and compensatory damages amounts did not qualify as annuity earnings and were not included in her pension calculation.
6. According to RPS records, Ms. Henry contacted RPS on July 31, 2016 and requested that her monthly benefit be recalculated and increased to the benefit estimate she received.
7. In a letter dated August 2, 2016, RPS informed Ms. Henry that she was not entitled to the higher benefit estimate amount.

8. Ms. Henry sent an e-mail to RPS on August 3, 2016, appealing RPS's decision and asking to review the calculations of her earnings and the agreement outlined in the Settlement.
9. The Pension Board reviewed Ms. Henry's appeal at its September 28, 2016 meeting. Ms. Henry appeared at the meeting. She stated that her pension benefit estimate was not properly calculated in 2013. In addition, she was concerned that her benefit amount and credited service years changed from the 2013 estimate when RPS performed the final calculation. In support of her appeal, Ms. Henry first stated that she was not notified of the change in her pension payment or service credits and that she felt she should have been notified so that she could change her beneficiary designation. Second, Ms. Henry alleged that RPS erred by failing to use her highest three years of compensation in its calculations. Third, Ms. Henry reiterated that the funds she received in 2009 from the Settlement were taxed and should have been included in her 2009 wages. Finally, Ms. Henry stated that she felt that her pension benefit was changed in retaliation in order to recover the funds she received in her Settlement.
10. At the September 28, 2016 meeting, the Pension Board unanimously denied Ms. Henry's appeal.
11. After the September Pension Board meeting, RPS discovered a potential issue with Ms. Henry's benefit calculation. Accordingly, the written decision on Ms. Henry's appeal was postponed until RPS reviewed and confirmed Ms. Henry's benefit.
12. On December 27, 2016, RPS sent Ms. Henry a letter explaining that it had finalized its recalculations of her pension benefit and determined that she had received an overpayment. The letter also explained that RPS would offset Ms. Henry's benefit going forward until the overpayment, plus interest, was repaid. The letter further noted that Ms. Henry could appeal RPS's decisions to the Pension Board.
13. On January 17, 2017, Ms. Henry received a letter from Dr. Brian Daugherty, then Chairman of the Pension Board, reminding her that she had a right to appeal RPS's decisions as explained in the December 27, 2016 letter.
14. No further communication was received from Ms. Henry.

15. The Pension Board determined that, given the length of time with no response, it was unlikely Ms. Henry would appeal RPS's December 2016 determinations. Therefore, the Pension Board decided that it would issue a written decision on Ms. Henry's appeal from September. The decision was discussed at the Pension Board's April 26, 2017 meeting.

Pension Board Conclusions.

1. RPS generally provides members with retirement estimates based on members' proposed retirement dates. The monthly retirement benefit estimates provided by RPS are clearly designated as estimates and provide that actual benefits may vary. Once a member schedules a retirement appointment, RPS recalculates a member's benefit to ensure no errors were made during the initial estimate calculation. If there were any errors, RPS will correct them in the final calculation before beginning to pay the pension benefit. However, the Ordinances and Rules do not require RPS to update a member every time an estimate changes between the initial estimate and the final calculation. Therefore, RPS does not do so.
2. The Pension Board finds that Ms. Henry is not entitled to receive the amount of her benefit estimate simply because RPS did not inform her that her pension benefit estimate changed between the initial estimate and the final calculation.
3. Ms. Henry alleges that she was never given the opportunity to discuss or make changes to her benefit selection following the final calculation, which she states she would have changed due to the change in her benefit amount.
 - a) As noted above, the Ordinances and Rules do not require RPS to inform members when their benefit amounts change from the initial estimate. The estimate forms clearly state these amounts are only estimates.
 - b) Even if Ms. Henry would have changed her benefit election or beneficiary designation prior to her retirement, she is unable to do so now and was unable to do so when she contacted ERS well over a year after she began receiving her pension benefit. Rule 1013 provides that a member generally may not change his or her elected form of benefit or beneficiary after the member's retirement effective date.

4. Ms. Henry also argues that the settlement payments she received in 2009 should have been included in her 2009 compensation because she received those amounts and paid taxes on them in 2009. However, as RPS explained, the back pay that Ms. Henry received in connection with the Settlement related to earnings in 1997 and 1998. Accordingly, the Pension Board finds that the back pay was properly credited to Ms. Henry as annuity earnings in those years.
5. Ms. Henry also suggests that RPS used the incorrect years for determining her final average salary and used the incorrect amount of service credit. However, RPS has concluded that Ms. Henry's final average salary was calculated correctly and her years of service credit were also properly calculated.
 - a) Ms. Henry elected a backDROP and the election of the backDROP prevents certain years from being included in the calculation of Ms. Henry's benefit. Rule 711 provides that the backDROP date is the "date immediately following the date selected by the member as the last date to be included in the calculation of the member's final average salary and pension service credit."
6. Finally, Ms. Henry suggested that her pension benefit estimate was changed in retaliation to the fact that she received Settlement payments. However, Ms. Henry offers no evidence to demonstrate retaliation. Accordingly, the Pension Board cannot find that Ms. Henry's benefit estimate was changed in retaliation to her receipt of Settlement amounts.
7. Based on the foregoing, the Pension Board finds that Ms. Henry is not entitled to receive the amount provided in her benefit estimate.

The vote to deny Ms. Henry's appeal was unanimous. Motion by Ms. Van Kampen, second by Mr. Harper.

In open session, the Pension Board made a motion relative to agenda item 9(c) as follows:

(e) Anne Varick—Disability Retirement Appeal

The Pension Board voted 6-2-1, with Messes. Braun, Van Kampen and Bedford, Messrs. Byrne, Zepecki and Holton approving, Ms. Funck and Mr. Harper opposing, and Mr. Gedemer abstaining, to approve the accidental disability pension for Ms. Varick. Motion by Mr. Byrne, second by Ms. Bedford.

In open session, the Pension Board made a motion relative to agenda item 9(c) as follows:

(f) Tara Brewi—Deferred Benefit

The Pension Board has determined facts and conclusions as described below and denies the appeal by Tara Brewi consistent with the discretion assigned to the Pension Board by Ordinance section 201.24(8.17)(a) to interpret the Ordinances and Rules of the Employees' Retirement System of the County of Milwaukee ("ERS"), based on the following:

Factual Findings.

1. Tara Brewi was initially employed by the County as an ERS-eligible Registered Nurse I on June 7, 1976, at which time she enrolled in ERS. She continued full-time employment in the position until January 2, 1978, and earned ERS service credit during that time.
2. On January 3, 1978, Ms. Brewi transferred to a Nursing Instructor I position as an Emergency Appointment. There is no record of Ms. Brewi electing to join ERS while in her Emergency Appointment position.
3. On March 5, 1980, Ms. Brewi's Nursing Instructor I position was reclassified as an ERS-eligible regular appointment, and she was re-enrolled in ERS. Ms. Brewi earned service credit from March 5, 1980 until her termination on July 31, 1984.
4. In a letter dated August 30, 1984, former ERS Director Thomas C. Dudenhoefer notified Ms. Brewi that her application for deferred retirement status had been received and was on file in the ERS office. ERS estimated Ms. Brewi's maximum retirement allowance to be approximately \$240.00 per month beginning February 1, 2012.

Ms. Brewi stated during her appeal that she never received this letter.

5. As of December 31, 1993, Ms. Brewi's Milwaukee County Benefits Statement indicated that she had 6.14740 County service credits. As of December 31, 2015, Ms. Brewi's Annual Pension Statement indicated that she had 6.0 County service credits. The 2015 Annual Pension Statement conspicuously stated: "Disclaimer: The figures contained in this document are subject to change and are not legally binding."
6. On August 23, 2016, Ms. Brewi sent a request to Retirement Plan Services ("RPS") stating that she would like to retire and collect her pension benefit. RPS then reviewed Ms. Brewi's file and records and determined that she had 5.99728 service credits, not the 6 service credits necessary for vesting.
7. In a letter dated August 25, 2016, former RPS Director Marian Ninneman notified Ms. Brewi that a review of her records showed that Ms. Brewi earned 5.99728 service credits during her employment. Ms. Ninneman explained that 6 years of service credits were required for vesting, and therefore Ms. Brewi's request to commence her pension was denied.
8. In a letter dated September 1, 2016, Ms. Brewi requested an appeal of RPS's denial of her pension benefits. Ms. Brewi contested the Emergency Appointment status of her Nursing Instructor I position. Ms. Brewi stated that at no time was she notified that from January 3, 1978 to March 5, 1980 her Nursing Instructor I position was an Emergency Appointment and did not qualify towards ERS benefits. She further contended that her 5.99728 pension service credits should be rounded up to 6.
9. In a letter dated September 15, 2016, Ms. Brewi confirmed her attendance at the November 16, 2016 meeting. She also stated that she did not receive a letter and retirement packet that, according to a representative from RPS, should have been sent to her in 2012, three months before she turned age 60, and that there was no record of this letter and retirement packet in her file. In her letter, Ms. Brewi also noted that she did not receive a letter regarding her pension benefit that, according to RPS's records, was sent in 1984. The representative allegedly agreed to send Ms. Brewi the letter.

10. In a letter dated November 14, 2016, ERS informed Ms. Brewi that her appeal needed to be rescheduled from the November 16, 2016 meeting due to the need to determine whether a fiscal analysis was needed for her appeal.
11. In letter dated April 6, 2017, Ms. Brewi requested an update regarding when her appeal was to be scheduled. ERS responded in a letter dated April 19, 2017 informing Ms. Brewi that her appeal would be heard at the April 26, 2017 meeting.
12. Ms. Brewi addressed the Pension Board at the the April 26, 2017 meeting to present her arguments as to why she is entitled to 6 service credits and a deferred vested pension. Her arguments are discussed below as part of the Pension Board's conclusions.

Pension Board Conclusions.

1. Emergency Appointment Employee. Pursuant to Rule 202(g), which was in effect while Ms. Brewi was employed as an Emergency Appointment employee, Emergency Appointment employees are optional ERS members.
 - (a) Rules 202 and 204 provide that optional members may join ERS, but they must affirmatively elect to do so. There is no record of Ms. Brewi exercising her option to become an ERS member while she worked as an Emergency Appointment employee.
 - (b) Ms. Brewi contends that she was not notified that her time as an Emergency Appointment employee would not contribute to her accrual of service credit in ERS. However, Ms. Brewi completed two ERS enrollment forms, the first when she commenced County employment, and the second when her Nursing Instructor I position was reclassified as an ERS-eligible Regular Appointment on March 5, 1980. Ms. Brewi could have inquired why she had to complete a second enrollment form if she believed she had been an ERS member the entire time. Additionally, Ms. Brewi's Emergency Appointment lasted for two years. At no time when she received her pension statements did she inquire why she did not have more service credit to reflect those years.
 - (c) Based on Rules 202 and 204 as in effect during Ms. Brewi's employment, her Emergency Appointment position was an

optional position for which she did not earn service credit unless she affirmatively elected into ERS. She did not do so. Accordingly, the Pension Board finds that Ms. Brewi is not entitled to service credit for her time as an Emergency Appointment employee.

2. Six Years of Service Credit Required. Pursuant to Ordinance section 201.24(4.5)(2), a member who commenced ERS membership between January 1, 1971 and January 1, 1982 is not eligible for a deferred vested pension if his or her employment is terminated prior to the "completion of six (6) years of service."
 - (a) Pursuant to Rule 301, one year of full-time creditable service equals 1.00000 credit, and service credits are calculated to the hundred thousandth decimal point (e.g., 0.12345). Rule 302 provides that service for a member who works less than full-time is credited on a prorated basis in accordance with Rule 301.
 - (b) While Ms. Brewi was previously informed that she had sufficient service credit to be vested in her pension benefit, her Annual Pension Statement as of December 31, 2015 clearly stated, "The figures contained in this document are subject to change and are not legally binding." Following Ms. Brewi's request to begin her benefit, RPS determined that Ms. Brewi had only 5.99728 years of service credits.
 - (c) Ms. Brewi contends that ERS should round her service credit up to 6. Pursuant to Rule 301, service credits are calculated to the hundred thousandth. Additionally, no Ordinance or Rule allows ERS to round up Ms. Brewi's service credit. Therefore, ERS cannot round Ms. Brewi's 5.99728 service credits up to 6.00000.
 - (d) Because Ms. Brewi does not have the 6.00000 service credits required for vesting under Ordinance section 201.24(4.5)(2), the Pension Board finds she is not eligible for a deferred vested pension.
3. Prior Correspondence. Ms. Brewi argues that she did not receive some of the prior correspondence that ERS sent to her regarding her benefit. Ms. Brewi further contends that ERS should have commenced her benefit at the time she turned 60 and requested a retroactive benefit to that date.

- (a) As noted above, the Pension Board has determined that Ms. Brewi is not eligible for a deferred vested pension from ERS because she does not have sufficient service credit. Accordingly, even if Ms. Brewi had contacted ERS at the time she turned age 60, she would not have been eligible for a benefit.
- (b) It should also be noted that the Ordinances and Rules do not allow for automatic commencement of a member's deferred vested benefit. Rule 1049(3) provides that a deferred vested member's retirement effective date is the first day of the month following the day all required paperwork is received by RPS. RPS will not commence a member's benefit until all of the paperwork is received. There is no Ordinance or Rule that allows ERS to pay retroactive benefits to a member who failed to apply for a deferred vested pension at the time the member was first eligible.

4. Service Credit Forfeited. Pursuant to Ordinance section 201.24(2.11) and Rule 1015, a member will forfeit his or her service credit if he or she is absent from service for more than five years in the ten consecutive years after last becoming a member (except for military service or authorized leave of absence), and is not vested in his or her service credit or eligible to receive a pension.

- (a) Because Ms. Brewi last became an ERS member on March 5, 1980 and terminated employment on July 31, 1984, her membership in ERS should have been terminated and her service credit would have been forfeited effective March 6, 1990. It appears that due to a calculation error, which was subsequently corrected by RPS in 2016, Ms. Brewi's service credit was not cancelled in 1990 as it should have been.

The Pension Board voted 8-1, with Mr. Zepecki opposed, to deny the appeal by Ms. Brewi. Motion by Mr. Harper, seconded by Mr. Holton.

Following the open session motions, Messrs. Byrne and Harper, and Messes Bedford and Van Kampen left the meeting.

12. Report on Compliance Review

The Pension Board took no action on this item.

13. Reports of Interim Director—Retirement Plan Services & Fiscal Officer

(a) Retirements Granted Report—March 2017

In open session, Ms. Bronikowski presented the Retirements Granted Report for March 2017. Twenty retirements from ERS were approved with a total monthly payment amount of \$25,385.57. Of those twenty ERS retirements, twelve were normal retirements, six were deferred retirements, one was an early retirement and one was an ordinary disability retirement. Nine members retired under the Rule of 75. Thirteen retirees chose the maximum option. Eight retirees elected backDROPs in amounts totaling \$991,072.79.

Ms. Bronikowski reported that no backDROP amounts exceeded \$250,000. Three backDROP amounts were in excess of \$200,000, three were in excess of \$100,000 and three were under \$100,000. Ms. Bronikowski explained the two retirees who received backDROP amounts over \$250,000 had over 25 years of service each.

(b) Retirement Plan Services Update

Ms. Bronikowski reported that pursuant to the agreed-upon procedures, the Baker Tilly audit is underway and the auditors have been onsite for two weeks.

Ms. Bronikowski concluded her report by stating that RPS expects to complete the actuarial services RFP by April 28, 2017.

(c) Fiscal Officer Report

Ms. Kirsanoff presented the Cash Position and Portfolio Activity Reports for March 2017. Ms. Kirsanoff reported that March activity remained positive. Net realized and unrealized gains were approximately \$20 million and benefits and expenses were approximately \$17 million. The funds from Geneva Capital were transferred to Vanguard in March. Capital calls were received from Mesirov for \$1.2 million and Siguler Guff for \$300,000. The capital calls were funded via the MCM Aggregate Bond Index Fund and the Northern Trust International Index Fund.

Ms. Kirsanoff next presented the Funds Approved by the Board Report. Ms. Kirsanoff noted the Board approved \$54 million for 2017 second quarter funding at its last meeting. April disbursements are estimated to be approximately \$19 million.

Ms. Kirsanoff next presented reports for the 2017 top ten vendor list, the 2017 first quarter check register and, the administrative and investment expenses versus budgeted expenses as of March 31, 2017. Ms. Kirsanoff reported the amount of the reimbursement for County-paid expenses did not change from the amount presented at the May 2017 Pension Board meeting.

Ms. Kirsanoff called for questions.

In response to a question from Ms. Braun, Ms. Kirsanoff confirmed the amount on the check register for payment to Judge Gerlach was for January through March 2017.

14. Administrative Matters

(a) Future Topics

The Pension Board concluded with a discussion of additions and deletions to the Pension Board, Audit Committee and Investment Committee future topic lists.

Ms. Funck questioned whether the Pension Board should amend its Rule regarding closed session attendance. Messrs. Huff and Carroll observed that the Board could amend its Rule. However, Mr. Carroll explained the Pension Board does have discretion as to who stays for closed session under Wisconsin state meetings laws. Mr. Huff added the situation that occurred today was somewhat unusual and also suggested a Rule amendment may not be necessary.

15. Adjournment

The meeting adjourned at 2:30 p.m.

Submitted by Steven D. Huff,
Secretary of the Pension Board